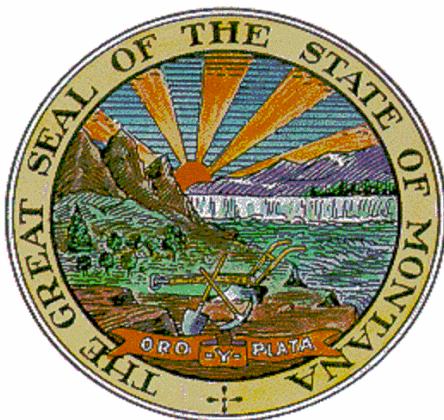


State of Montana
Department of Labor and Industry
Business Standards Division

RULES & STATUTES RELATING TO PROFESSIONAL ENGINEERS AND
PROFESSIONAL LAND SURVEYORS



ISSUED BY:

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**TITLE 2
CHAPTER 15
PART 17**

2-15-1701. Department of labor and industry -- head. (1) There is a department of labor and industry. As prescribed in Article XII, section 2, of the Montana constitution, the department head is the commissioner of labor and industry.

(2) The commissioner shall be appointed and serve as provided for directors in [2-15-111](#).

(3) The commissioner shall receive an annual salary in such amount as may be specified by the legislature in the appropriation to the department of labor and industry.

(4) Before entering on the duties of his office, he must take and subscribe to the oath of office prescribed by the Montana constitution.

History: (1)En. 82A-1001 by Sec. 1, Ch. 272, L. 1971; Sec. 82A-1001, R.C.M. 1947; (2) thru (4)Ap. p. Sec. 2, Ch. 177, L. 1951; Sec. 41-1602, R.C.M. 1947; Ap. p. Sec. 3, Ch. 177, L. 1951; amd. Sec. 1, Ch. 27, L. 1957; amd. Sec. 2, Ch. 225, L. 1963; amd. Sec. 20, Ch. 177, L. 1965; amd. Sec. 2, Ch. 237, L. 1967; amd. Sec. 19, Ch. 100, L. 1973; amd. Sec. 6, Ch. 343, L. 1977; Sec. 41-1603, R.C.M. 1947; R.C.M. 1947, 41-1602, 41-1603, 82A-1001(part); amd. Sec. 20, Ch. 184, L. 1979; amd. Sec. 1, Ch. 116, L. 1981.

2-15-1763. Board of professional engineers and professional land surveyors. (1) There is a board of professional engineers and professional land surveyors.

(2) The board consists of nine members appointed by the governor with the consent of the senate. The members are:

(a) five professional engineers who have been engaged in the practice of engineering for at least 12 years and who have been in responsible charge of engineering teaching or important engineering work for at least 5 years and licensed in Montana for at least 5 years. No more than two of these members may be from the same branch of engineering.

(b) two professional and practicing land surveyors who have been engaged in the practice of land surveying for at least 12 years and who have been in responsible charge of land surveying or important land surveying work for at least 5 years and licensed in Montana for at least 5 years;

(c) two representatives of the public who are not engaged in or directly connected with the practice of engineering or land surveying.

(3) Each member must be a citizen of the United States and a resident of this state. A member, after serving three consecutive terms, may not be reappointed.

(4) (a) Except as provided in subsection (4)(b), each member shall serve for a term of 4 years.

(b) The governor may remove a member for misconduct, incompetency, or neglect of duty or for any other sufficient cause and may shorten the term of one public member so that it is not coincident with the term of the other public member.

(5) The board is allocated to the department for administrative purposes only, as prescribed in [2-15-121](#).

History: (1) thru (4)En. Sec. 4, Ch. 150, L. 1957; amd. Sec. 2, Ch. 282, L. 1969; Sec. 66-2327, R.C.M. 1947; amd. and redes. 82A-1602.11 by Sec. 215, Ch. 350, L. 1974; amd. Sec. 1, Ch. 366, L. 1975; Sec. 82A-1602.11, R.C.M. 1947; (5)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L.

1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.11; amd. Sec. 3, Ch. 408, L. 1979; amd. Sec. 21, Ch. 247, L. 1981; MCA 1979, ; redes. by Sec. 4, Ch. 274, L. 1981; amd. Sec. 1, Ch. 553, L. 1985; amd. Sec. 4, Ch. 492, L. 2001; Sec. , MCA 1999; redes. by Sec. 221(2), Ch. 483, L. 2001.

**TITLE 37
CHAPTER 1
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Part 1

Duties and Authority of Department, Director, and Boards

Part Cross-References

Contested cases, Title 2, ch. 4, part 6.

Appointment and qualifications of department heads -- duties, 2-15-111, 2-15-112.

Allocation for administrative purposes only, 2-15-121.
Department and boards created, Title 2, ch. 15, part 18.
Department's duties for Board of Horseracing, 23-4-103.
Grounds for disciplinary action as grounds for license denial -- conditions to new licenses, 37-1-137.

37-1-101. Duties of department. In addition to the provisions of 2-15-121, the department of labor and industry shall:

- (1) establish and provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, receiving and processing routine applications for licenses as defined by a board, issuing and renewing routine licenses as defined by a board, disciplining licensees, setting administrative fees, preparing agendas and meeting notices, conducting mailings, taking minutes of board meetings and hearings, and filing;
- (2) standardize policies and procedures and keep in Helena all official records of the boards;
- (3) make arrangements and provide facilities in Helena for all meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;
- (4) contract for or administer and grade examinations required by each board;
- (5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department;
- (6) assess the costs of the department to the boards and programs on an equitable basis as determined by the department;
- (7) adopt rules setting administrative fees and expiration, renewal, and termination dates for licenses;
- (8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual's board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307(1)(e);
- (9) provide notice to the appropriate legislative interim committee when a board cannot operate in a cost-effective manner;
- (10) monitor a board's cash balances to ensure that the balances do not exceed two times the board's annual appropriation level and adjust fees through administrative rules when necessary; and
- (11) establish policies and procedures to set fees for administrative services, as provided in 37-1-134, commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate with the cost of services provided.

History: En. 82A-1603 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1603; amd. Sec. 1, Ch. 293, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 390, L. 1983; amd. Sec. 1, Ch. 307, L. 1985; amd. Sec. 42, Ch. 83, L. 1989; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 21, Ch. 429, L. 1995; amd. Sec. 106, Ch. 483, L. 2001; amd. Sec. 6, Ch. 467, L. 2005.

37-1-102. Renumbered 37-1-121. Code Commissioner, 1981.

37-1-103. Renumbered 37-1-131. Code Commissioner, 1981.

37-1-104. Standardized forms. The department shall adopt standardized forms and processes to be used by the boards and department programs. The standardization is to streamline processes, expedite services, reduce costs and waste, and facilitate computerization.

History: En. Sec. 2, Ch. 293, L. 1981; amd. Sec. 7, Ch. 467, L. 2005.

37-1-105. Reporting disciplinary actions against licensees. The department has the authority and shall require that all boards and department programs require each applicant for licensure or renewal to report any legal or disciplinary action against the applicant that relates to the propriety of the applicant's practice of or fitness to practice the profession or occupation for which the applicant seeks licensure. Failure to furnish the required information, except pursuant to 37-1-138, or the filing of false information is grounds for denial or revocation of a license.

History: En. Sec. 3, Ch. 293, L. 1981; amd. Sec. 5, Ch. 271, L. 2003; amd. Sec. 8, Ch. 467, L. 2005.

37-1-106. Biennial report. The department, in cooperation with each licensing board, shall prepare a biennial report. The biennial report of the department shall contain for each board a summary of the board's activities, the board's goals and objectives, a detailed breakdown of board revenues and expenditures, statistics illustrating board activities concerning licensing, summary of complaints received and their disposition, number of licenses revoked or suspended, legislative or court action affecting the board, and any other information the department or board considers relevant. The department shall submit the report to the office of budget and program planning as a part of the information required by 17-7-111.

History: En. Sec. 4, Ch. 293, L. 1981; amd. Sec. 10, Ch. 125, L. 1983; amd. Sec. 32, Ch. 112, L. 1991; amd. Sec. 30, Ch. 349, L. 1993.

37-1-107 through 37-1-120 reserved.

37-1-121. Duties of commissioner. In addition to the powers and duties under 2-15-112 and 2-15-121, the commissioner of labor and industry shall:

(1) at the request of a party, appoint an impartial hearings examiner to conduct hearings whenever any board or department program holds a contested case hearing. The hearings examiner shall conduct hearings in a proper and legal manner.

(2) establish the qualifications of and hire all personnel to perform the administrative, legal, and clerical functions of the department for the boards. Boards within the department do not have authority to establish the qualifications of, hire, or terminate personnel. The department shall consult with the boards regarding recommendations for qualifications for executive or executive director positions.

(3) approve all contracts and expenditures by boards within the department. A board within the department may not enter into a contract or expend funds without the approval of the commissioner.

History: En. 82A-1604 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 14, Ch. 533, L. 1977; R.C.M. 1947, 82A-1604; amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-102, MCA 1979; redes. 37-1-121 by Code Commissioner, 1981; amd. Sec. 1, Ch. 165, L. 1985; amd. Sec. 22, Ch. 429, L. 1995; amd. Sec. 107, Ch. 483, L. 2001; amd. Sec. 9, Ch. 467, L. 2005.

37-1-122 through 37-1-129 reserved.

37-1-130. Definitions. As used in this part, the following definitions apply:

(1) "Administrative fee" means a fee established by the department to cover the cost of administrative services as provided for in 37-1-134.

(2) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

- (3) "Board fee" means:
- (a) a fee established by the board to cover program area costs as provided in 37-1-134; and
- (b) any other legislatively prescribed fees specific to boards and department programs.
- (4) "Department" means the department of labor and industry established in 2-15-1701.
- (5) "Department program" means a program administered by the department pursuant to this title and not affiliated with a board.
- (6) "Expired license" means a license that is not reactivated within the period of 45 days to 2 years after the renewal date for the license.
- (7) "Lapsed license" means a license that is not renewed by the renewal date and that may be reactivated within the first 45-day period after the renewal date for the license.
- (8) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation.
- (9) "Terminated license" means a license that is not renewed or reactivated within 2 years of the license lapsing.

History: En. Sec. 5, Ch. 274, L. 1981; amd. Sec. 108, Ch. 483, L. 2001; amd. Sec. 10, Ch. 467, L. 2005.

37-1-131. Duties of boards -- quorum required. A quorum of each board within the department shall:

- (1) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction;
- (2) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.
- (3) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (2), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;
- (4) pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);
- (5) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.
- (6) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.
- (7) The board or the department program may:
- (a) establish the qualifications of applicants to take the licensure examination;
- (b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;
- (c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and
- (d) require continuing education for licensure as provided in 37-1-306. If the board or department requires continuing education for continued licensure, the board or department may

not audit or verify continuing education requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement after the renewal period closes.

(8) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board.

History: En. 82A-1605 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 11, Ch. 250, L. 1973; R.C.M. 1947, 82A-1605(1) thru (3); amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-103, MCA 1979; redes. 37-1-131 by Code Commissioner, 1981; amd. Sec. 2, Ch. 165, L. 1985; amd. Sec. 1, Ch. 90, L. 1991; amd. Sec. 10, Ch. 619, L. 1993; amd. Sec. 23, Ch. 429, L. 1995; amd. Sec. 6, Ch. 492, L. 2001; amd. Sec. 8, Ch. 416, L. 2005; amd. Sec. 11, Ch. 467, L. 2005.

37-1-132. Nominees for appointment to licensing and regulatory boards. Private associations and members of the public may submit to the governor lists of nominees for appointment to professional and occupational licensing and regulatory boards. The governor may consider nominees from the lists when making appointments to such boards.

History: En. Sec. 9, Ch. 244, L. 1981.

Cross-References

Appointing power, Art. VI, sec. 8, Mont. Const.

37-1-133. Board members' compensation and expenses. Unless otherwise provided by law, each member of a board allocated to the department is entitled to receive \$50 per day compensation and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day spent on official board business. Board members who conduct official board business in their city of residence are entitled to receive a midday meal allowance, as provided for in 2-18-502. Ex officio board members may not receive compensation but shall receive travel expenses.

History: En. Sec. 1, Ch. 474, L. 1981; amd. Sec. 2, Ch. 123, L. 1983; amd. Sec. 4, Ch. 672, L. 1983.

37-1-134. Fees commensurate with costs. Each board allocated to the department shall set board fees related to the respective program area that are commensurate with costs for licensing, including fees for initial licensing, reciprocity, renewals, applications, inspections, and audits. A board may set an examination fee that must be commensurate with costs. A board that issues endorsements and licenses specialties shall set respective fees commensurate with costs. Unless otherwise provided by law, the department may establish standardized fees, including but not limited to fees for administrative services such as license verification, duplicate licenses, late penalty renewals, licensee lists, and other administrative service fees determined by the department as applicable to all boards and department programs. The department shall collect administrative fees on behalf of each board or department program and deposit the fees in the state special revenue fund in the appropriate account for each board or department program. Administrative service costs not related to a specific board or program area may be equitably distributed to board or program areas as determined by the department. Each board and department program shall maintain records sufficient to support the fees charged for each program area.

History: En. Sec. 1, Ch. 345, L. 1981; amd. Sec. 12, Ch. 467, L. 2005.

37-1-135. Licensing investigation and review -- record access. Any person, firm, corporation, or association that performs background reviews, complaint investigations, or peer reviews pursuant to an agreement or contract with a state professional or occupational licensing board shall make available to the board and the legislative auditor, upon request, any and all records or other information gathered or compiled during the course of the background review, complaint investigation, or peer review.

History: En. Sec. 1, Ch. 242, L. 1981.

Cross-References

Procurement of services, Title 18, ch. 8.

37-1-136. Disciplinary authority of boards -- injunctions. (1) Subject to 37-1-138, each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

- (a) revocation of a license;
- (b) suspension of its judgment of revocation on terms and conditions determined by the board;
- (c) suspension of the right to practice for a period not exceeding 1 year;
- (d) placing a licensee on probation;
- (e) reprimand or censure of a licensee; or
- (f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

(4) An action may not be taken against a person who is in compliance with Title 50, chapter 46.

History: En. Sec. 1, Ch. 246, L. 1981; amd. Sec. 6, Ch. 271, L. 2003; amd. Sec. 10, I.M. No. 148, approved Nov. 2, 2004.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

37-1-137. Grounds for disciplinary action as grounds for license denial -- conditions to new licenses. (1) Unless otherwise provided by law, grounds for disciplinary action by a board allocated to the department of labor and industry against a holder of an occupational or professional license may be, under appropriate circumstances, grounds for either issuance of a probationary license for a period not to exceed 1 year or denial of a license to an applicant.

(2) The denial of a license or the issuance of a probationary license under subsection (1) must be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 1, Ch. 273, L. 1985; amd. Sec. 109, Ch. 483, L. 2001.

37-1-138. Protection of professional licenses for activated military reservists -- rulemaking authority -- definitions. (1) For purposes of this section, the following definitions apply:

(a) "Activated reservist" means a member of a reserve component who has received federal military orders to report for federal active duty for at least 90 consecutive days.

(b) "License" has the meaning provided in 37-1-302.

(c) "Reserve component" means the Montana national guard or the military reserves of the United States armed forces.

(2) An activated reservist who holds an occupational or professional license may report the reservist's activation to the appropriate professional licensing board or to the department of labor and industry if the licensing requirements are administered by the department. The report must, at a minimum, include a copy of the reservist's orders to federal active duty. The report may request that the reservist's professional license revert to an inactive status.

(3) If an activated reservist has requested that the reservist's license revert to inactive status pursuant to subsection (2), then for the duration of the reservist's active duty service under the orders submitted, the department or licensing board may not:

(a) require the collection of professional licensing fees or continuing education fees from the activated reservist;

(b) require that the activated reservist take continuing education classes or file a report of continuing education classes completed; or

(c) revoke or suspend the activated reservist's professional license, require the license to be forfeited, or allow the license to lapse for failure to pay licensing fees or continuing education fees or for failure to take or report continuing education classes.

(4) (a) Upon release from federal active duty service, the reservist shall send a copy of the reservist's discharge documents to the appropriate professional licensing board or to the department.

(b) The board or department shall evaluate the discharge documents, consider the military position held by the reservist and the duties performed by the reservist during the active duty, and compare the position and duties to the licensing requirements for the profession. The board or department shall also consider the reservist's length of time on federal active duty.

(c) Based on the considerations pursuant to subsection (4)(b) and subject to subsection (5):

(i) the license must be fully restored;

(ii) conditions must be attached to the reservist's continued retention of the license; or

(iii) the license must be suspended or revoked.

(5) (a) A licensing board or the department may adopt rules concerning what conditions may be attached to a reservist's professional license pursuant to subsection (4)(c)(ii).

(b) If conditions are attached pursuant to subsection (4)(c)(ii) or the license is suspended or revoked pursuant to subsection (4)(c)(iii), the affected reservist may, within 90 days of the decision to take the action, request a hearing by writing a letter to the board or department. The board or department shall conduct a requested hearing within 30 days of receiving the written request.

History: En. Sec. 2, Ch. 271, L. 2003.

37-1-139 and 37-1-140 reserved.

37-1-141. License renewal -- lapse -- expiration -- termination. (1) The renewal date for a license must be set by department rule. The department shall provide notice prior to the renewal date.

(2) To renew a license, a licensee shall submit a completed renewal form, comply with all certification and continuing education requirements, and remit renewal fees before the end of the renewal period.

(3) A licensee may reactivate a lapsed license within 45 days after the renewal date by following the process in subsection (5) and complying with all certification and educational requirements.

(4) A licensee may reactivate an expired license within 2 years after the renewal date by following the process in subsection (5) and complying with all certification and education requirements that have accrued since the license was last granted or renewed as prescribed by board or department rule.

(5) To reactivate a lapsed license or an expired license, in addition to the respective requirements in subsections (3) and (4), a licensee shall:

- (a) submit the completed renewal form;
- (b) pay the late penalty fee provided for in subsection (7); and
- (c) pay the current renewal fee as prescribed by the department or the board.

(6) (a) A licensee who practices with a lapsed license is not considered to be practicing without a license.

(b) A licensee who practices after a license has expired is considered to be practicing without a license.

(7) The department may assess a late penalty fee for each renewal period in which a license is not renewed. The late penalty fee need not be commensurate with the costs of assessing the fee.

(8) Unless otherwise provided by statute or rule, an occupational or professional license that is not renewed within 2 years of the most recent renewal date automatically terminates. The terminated license may not be reactivated, and a new original license must be obtained.

(9) The department or board responsible for licensing a licensee retains jurisdiction for disciplinary purposes over the licensee for a period of 2 years after the date on which the license lapsed.

(10) This section may not be interpreted to conflict with 37-1-138.

History: En. Sec. 1, Ch. 272, L. 1985; amd. Sec. 13, Ch. 467, L. 2005.

Part 2

Licensure of Criminal Offenders

Part Cross-References

Criminal justice policy -- rights of convicted, Art. II, sec. 28, Mont. Const.

Gambling -- qualifications for licensure, 23-5-176.

Building and loan agent's license revocable for violation of criminal statutes, 32-2-409.

No outfitter's license issued to criminal offender, 37-47-302.

Effect of conviction, 46-18-801.

Supervision of probationers and parolees, Title 46, ch. 23, part 10.

37-1-201. Purpose. It is the public policy of the legislature of the state of Montana to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the

assumption of the responsibilities of citizenship. The legislature finds that the public is best protected when such offenders are given the opportunity to secure employment or to engage in a meaningful occupation, while licensure must be conferred with prudence to protect the interests of the public.

History: En. 66-4001 by Sec. 1, Ch. 490, L. 1975; R.C.M. 1947, 66-4001.

37-1-202. Intent and policy. It is the intent of the legislature and the declared policy of the state that occupational licensure be granted or revoked as a police power of the state in its protection of the public health, safety, and welfare.

History: En. 66-4002 by Sec. 2, Ch. 490, L. 1975; R.C.M. 1947, 66-4002.

37-1-203. Conviction not a sole basis for denial. Criminal convictions shall not operate as an automatic bar to being licensed to enter any occupation in the state of Montana. No licensing authority shall refuse to license a person solely on the basis of a previous criminal conviction; provided, however, where a license applicant has been convicted of a criminal offense and such criminal offense relates to the public health, welfare, and safety as it applies to the occupation for which the license is sought, the licensing agency may, after investigation, find that the applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust and deny the issuance of a license.

History: En. 66-4003 by Sec. 3, Ch. 490, L. 1975; R.C.M. 1947, 66-4003.

37-1-204. Statement of reasons for denial. When a licensing agency prohibits an applicant from being licensed wholly or partially on the basis of a criminal conviction, the agency shall state explicitly in writing the reasons for the decision.

History: En. 66-4004 by Sec. 4, Ch. 490, L. 1975; R.C.M. 1947, 66-4004.

Cross-References

Findings of fact required, 2-4-623.

Application of contested case procedure to licensing, 2-4-631.

37-1-205. Licensure on completion of supervision. Completion of probation or parole supervision without any subsequent criminal conviction shall be evidence of rehabilitation; provided, however, that the facts surrounding the situation that led to the probation or parole supervision may be considered as they relate to the occupation for which a license is sought and provided that nothing herein shall be construed to prohibit licensure of a person while he is under state supervision if the licensing agency finds insufficient evidence to preclude such licensure.

History: En. 66-4005 by Sec. 5, Ch. 490, L. 1975; R.C.M. 1947, 66-4005.

Part 3

Uniform Professional Licensing and Regulation Procedures

37-1-301. Purpose. The purpose of this part is to establish uniform guidelines for the licensing and regulation of professions and occupations under the jurisdiction of professional and occupational licensing boards governed by this part.

History: En. Sec. 1, Ch. 429, L. 1995.

37-1-302. Definitions. As used in this part, the following definitions apply:

(1) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(2) "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(3) "Department" means the department of labor and industry.

(4) "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

(5) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the board;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether a board should seek an injunction.

(6) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation.

(7) "Profession" or "occupation" means a profession or occupation regulated by a board.

History: En. Sec. 2, Ch. 429, L. 1995; amd. Sec. 110, Ch. 483, L. 2001; amd. Sec. 14, Ch. 467, L. 2005.

37-1-303. Scope. This part governs the licensure, the practice and unauthorized practice, and the discipline of professions and occupations governed by this title unless otherwise provided by statutes relating to a specific board and the profession or occupation it regulates. The provisions of this chapter must be construed to supplement the statutes relating to a specific board and the profession it regulates. The method for initiating and judging a disciplinary proceeding, specified in 37-1-307(1)(e), must be used by a board in all disciplinary proceedings involving licensed professionals.

History: En. Sec. 3, Ch. 429, L. 1995.

37-1-304. Licensure of out-of-state applicants -- reciprocity. (1) A board may issue a license to practice without examination to a person licensed in another state if the board determines that:

(a) the other state's license standards at the time of application to this state are substantially equivalent to or greater than the standards in this state; and

(b) there is no reason to deny the license under the laws of this state governing the profession or occupation.

(2) The license may not be issued until the board receives verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment.

(3) This section does not prevent a board from entering into a reciprocity agreement with the licensing authority of another state or jurisdiction. The agreement may not permit out-of-state licensees to obtain a license by reciprocity within this state if the license applicant has not met standards that are substantially equivalent to or greater than the standards required in this state as determined by the board on a case-by-case basis.

History: En. Sec. 4, Ch. 429, L. 1995; amd. Sec. 1, Ch. 210, L. 1997.

37-1-305. Temporary practice permits. (1) A board may issue a temporary practice permit to a person licensed in another state that has licensing standards substantially equivalent to those of this state if the board determines that there is no reason to deny the license under the laws of this state governing the profession or occupation. The person may practice under the permit until a license is granted or until a notice of proposal to deny a license is issued. The permit may not be issued until the board receives verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment.

(2) A board may issue a temporary practice permit to a person seeking licensure in this state who has met all licensure requirements other than passage of the licensing examination. Except as provided in 37-68-311 and 37-69-306, a permit is valid until the person either fails the first license examination for which the person is eligible following issuance of the permit or passes the examination and is granted a license.

History: En. Sec. 5, Ch. 429, L. 1995; amd. Sec. 1, Ch. 203, L. 1999.

37-1-306. Continuing education. A board or, for programs without a board, the department may require licensees to participate in flexible, cost-efficient, effective, and geographically accessible continuing education.

History: En. Sec. 6, Ch. 429, L. 1995; amd. Sec. 15, Ch. 467, L. 2005.

37-1-307. Board authority. (1) A board may:

(a) hold hearings as provided in this part;

(b) issue subpoenas requiring the attendance of witnesses or the production of documents and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint and must be signed by a member of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) establish a screening panel to determine whether there is reasonable cause to believe that a licensee has violated a particular statute, rule, or standard justifying disciplinary proceedings. A screening panel shall specify in writing the particular statute, rule, or standard that the panel believes may have been violated. The screening panel shall also state in writing the reasonable grounds that support the panel's finding that a violation may have occurred. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(e) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding the board's licensees and license applicants and regarding possible unlicensed practice.

[(3) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]
[Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.]

Comment [1]: <eff>

Comment [2]: </eff>

History: En. Sec. 7, Ch. 429, L. 1995; amd. Sec. 22, Ch. 552, L. 1997; amd. Sec. 2, Ch. 230, L. 1999; amd. Sec. 8, Ch. 492, L. 2001; amd. Sec. 16, Ch. 467, L. 2005.

37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exceptions. (1) Except as provided in subsections (4) and (5), a person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have committed a violation of this part, the department may, with the concurrence of a member of the screening panel established in 37-1-307, investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation.

(3) A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

(4) A person under legal custody of a county detention center or incarcerated under legal custody of the department of corrections may not file a complaint under subsection (1) against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while detained or confined in a county detention center or incarcerated under legal custody of the department of corrections unless the complaint is first reviewed by a correctional health care review team provided for in 37-1-331.

(5) A board member may file a complaint with the board on which the member serves or otherwise act in concert with a complainant in developing, authoring, or initiating a complaint to be filed with the board if the board member determines that there are reasonable grounds to believe that a particular statute, rule, or standard has been violated.

History: En. Sec. 8, Ch. 429, L. 1995; amd. Sec. 4, Ch. 475, L. 1997; amd. Sec. 1, Ch. 375, L. 1999; amd. Sec. 9, Ch. 492, L. 2001.

37-1-309. Notice -- request for hearing. (1) If a reasonable cause determination is made pursuant to 37-1-307 that a violation of this part has occurred, a notice must be prepared by department legal staff and served on the alleged violator. The notice may be served by certified mail to the current address on file with the board or by other means authorized by the Montana Rules of Civil Procedure. The notice may not allege a violation of a particular statute, rule, or standard unless the board or the board's screening panel, if one has been established, has made a written determination that there are reasonable grounds to believe that the particular statute, rule, or standard has been violated.

(2) A licensee or license applicant shall give the board the licensee's or applicant's current address and any change of address within 30 days of the change.

(3) The notice must state that the licensee or license applicant may request a hearing to contest the charge or charges. A request for a hearing must be in writing and received in the offices of the department within 20 days after the licensee's receipt of the notice. Failure to

request a hearing constitutes a default on the charge or charges, and the board may enter a decision on the basis of the facts available to it.

History: En. Sec. 9, Ch. 429, L. 1995; amd. Sec. 10, Ch. 492, L. 2001.

37-1-310. Hearing -- adjudicative procedures. The procedures in Title 2, chapter 4, governing adjudicative proceedings before agencies; the Montana Rules of Civil Procedure; and the Montana Rules of Evidence govern a hearing under this part. A board has all the powers and duties granted by Title 2, chapter 4.

History: En. Sec. 10, Ch. 429, L. 1995.

37-1-311. Findings of fact -- order -- report. (1) If the board decides by a preponderance of the evidence, following a hearing or on default, that a violation of this part occurred, the department shall prepare and serve the board's findings of fact and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated this part, the department shall prepare and serve the board's findings of fact and an order of dismissal of the charges.

(2) The department may report the issuance of a notice and final order to:

(a) the person or entity who brought to the department's attention information that resulted in the initiation of the proceeding;

(b) appropriate public and private organizations that serve the profession or occupation; and

(c) the public.

History: En. Sec. 11, Ch. 429, L. 1995.

37-1-312. Sanctions -- stay -- costs -- stipulations. (1) Upon a decision that a licensee or license applicant has violated this part or is unable to practice with reasonable skill and safety due to a physical or mental condition or upon stipulation of the parties as provided in subsection (3), the board may issue an order providing for one or any combination of the following sanctions:

(a) revocation of the license;

(b) suspension of the license for a fixed or indefinite term;

(c) restriction or limitation of the practice;

(d) satisfactory completion of a specific program of remedial education or treatment;

(e) monitoring of the practice by a supervisor approved by the disciplining authority;

(f) censure or reprimand, either public or private;

(g) compliance with conditions of probation for a designated period of time;

(h) payment of a fine not to exceed \$1,000 for each violation. Fines must be deposited in the state general fund.

(i) denial of a license application;

(j) refund of costs and fees billed to and collected from a consumer.

(2) A sanction may be totally or partly stayed by the board. To determine which sanctions are appropriate, the board shall first consider the sanctions that are necessary to protect or compensate the public. Only after the determination has been made may the board consider and include in the order any requirements designed to rehabilitate the licensee or license applicant.

(3) The licensee or license applicant may enter into a stipulated agreement resolving potential or pending charges that includes one or more of the sanctions in this section. The stipulation is an informal disposition for the purposes of 2-4-603.

(4) A licensee shall surrender a suspended or revoked license to the board within 24 hours after receiving notification of the suspension or revocation by mailing it or delivering it personally to the board.

History: En. Sec. 12, Ch. 429, L. 1995.

37-1-313. Appeal. A person who is disciplined or denied a license may appeal the decision to the district court as provided in Title 2, chapter 4.

History: En. Sec. 13, Ch. 429, L. 1995.

37-1-314. Reinstatement. A licensee whose license has been suspended or revoked under this part may petition the board for reinstatement after an interval set by the board in the order. The board may hold a hearing on the petition and may deny the petition or order reinstatement and impose terms and conditions as provided in 37-1-312. The board may require the successful completion of an examination as a condition of reinstatement and may treat a licensee whose license has been revoked or suspended as a new applicant for purposes of establishing the requisite qualifications of licensure.

History: En. Sec. 14, Ch. 429, L. 1995.

37-1-315. Enforcement of fine. (1) If payment of a fine is included in an order and timely payment is not made as directed in the order, the board may enforce the order for payment in the district court of the first judicial district.

(2) In a proceeding for enforcement of an order of payment of a fine, the order is conclusive proof of the validity of the order of payment and the terms of payment.

History: En. Sec. 15, Ch. 429, L. 1995.

37-1-316. Unprofessional conduct. The following is unprofessional conduct for a licensee or license applicant governed by this chapter:

(1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;

(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied.

- (8) failure to comply with a term, condition, or limitation of a license by final order of a board;
- (9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;
- (10) addiction to or dependency on a habit-forming drug or controlled substance as defined in Title 50, chapter 32, as a result of illegal use of the drug or controlled substance;
- (11) use of a habit-forming drug or controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally;
- (12) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;
- (13) engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or without taking adequate precautions, including but not limited to informed consent, protective gear, or cessation of practice;
- (14) misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds;
- (15) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;
- (16) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;
- (17) failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:
 - (a) peer review committee;
 - (b) professional association; or
 - (c) local, state, federal, territorial, provincial, or Indian tribal government;
- (18) conduct that does not meet the generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards.

History: En. Sec. 16, Ch. 429, L. 1995.

37-1-317. Practice without license -- investigation of complaint -- injunction -- penalties. (1) The department shall investigate complaints or other information received concerning practice by an unlicensed person of a profession or occupation for which a license is required by this title.

(2) (a) Unless otherwise provided by statute, a board may file an action to enjoin a person from practicing, without a license, a profession or occupation for which a license is required by this title. In addition to the penalty provided for in 37-1-318, a person violating an injunction issued pursuant to this section may be held in contempt of court.

(b) A person subject to an injunction for practicing without a license may also be subject to criminal prosecution. In a complaint for an injunction or in an affidavit, information, or indictment alleging that a person has engaged in unlicensed practice, it is sufficient to charge that the person engaged in the unlicensed practice of a licensed profession or occupation on a certain day in a certain county without averring further or more particular facts concerning the violation.

(3) Unless otherwise provided by statute, a person practicing a licensed profession or occupation in this state without complying with the licensing provisions of this title is guilty of a misdemeanor punishable by a fine of not less than \$250 or more than \$1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of this chapter constitutes a separate offense.

(4) The department may issue a citation to and collect a fine, as provided in 37-68-316 and 37-69-310, from a person at a job site who is performing plumbing or electrical work and who fails to display a license or proof of licensure at the request of an employee of the department who bears responsibility for compliance with licensure requirements.

History: En. Sec. 17, Ch. 429, L. 1995; amd. Sec. 3, Ch. 230, L. 1999; amd. Sec. 1, Ch. 402, L. 1999.

37-1-318. Violation of injunction -- penalty. A person who violates an injunction issued under 37-1-317 shall pay a civil penalty, as determined by the court, of not more than \$5,000. Fifty percent of the penalty must be deposited in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund.

History: En. Sec. 18, Ch. 429, L. 1995.

37-1-319. Rules. A board may adopt rules:

(1) under the guidelines of 37-1-306, regarding continuing education and establishing the number of hours required each year, the methods of obtaining education, education topics, and carrying over hours to subsequent years;

(2) regarding practice limitations for temporary practice permits issued under 37-1-305 and designed to ensure adequate supervision of the practice until all qualifications for licensure are met and a license is granted;

(3) regarding qualifications for inactive license status that may require compliance with stated continuing education requirements and may limit the number of years a person may remain on inactive status without having to reestablish qualifications for licensure;

(4) regarding maintenance and safeguarding of client funds or property possessed by a licensee and requiring the funds or property to be maintained separately from the licensee's funds and property; and

(5) defining acts of unprofessional conduct, in addition to those contained in 37-1-316, that constitute a threat to public health, safety, or welfare and that are inappropriate to the practice of the profession or occupation.

History: En. Sec. 19, Ch. 429, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-1-320. Mental intent -- unprofessional conduct. A licensee may be found to have violated a provision of 37-1-316 or a rule of professional conduct enacted by a governing board without proof that the licensee acted purposefully, knowingly, or negligently.

History: En. Sec. 7, Ch. 492, L. 2001.

37-1-321 through 37-1-330 reserved.

37-1-331. Correctional health care review team. (1) There is a correctional health care review team process in the department. The purpose of a review team is to review complaints filed by an inmate against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while the person was detained or confined in a county detention center or incarcerated under legal custody of the department of corrections. The inmate may file a complaint directly with the correctional health care review team for review or, if a board receives a complaint that has not been reviewed, the board shall forward the complaint to the review team. If the review team has reason to believe that there has been a violation of this part arising out of health care or rehabilitative services provided to a person detained or confined in a county detention center, the review team shall report the possible violation to the department for appropriate action under 37-1-308.

(2) Each health care licensing board shall solicit and submit to the department a list of licensed or certified health care or rehabilitative service professionals who have correctional health care experience and who are interested in participating on a team. A current board member may not participate on a review team. The department shall solicit from the administrators of the county detention centers and from the department of corrections names of licensed or certified health care or rehabilitative service providers who have correctional health care or rehabilitative services experience and are interested in participating on a review team. Each member of a review team must have at least 2 years of experience in providing health care or rehabilitative services in a correctional facility or program.

(3) Each correctional health care review team is composed of three members who shall represent health care and rehabilitative service providers who have provided health care or rehabilitative services to incarcerated persons. Two members of the review team must be providers of the same discipline and scope of practice as the provider against whom a complaint was filed, and the third member may be a provider of any other health care or rehabilitative services discipline. The members must be willing to serve without compensation. If available, a correctional health care professional employed by the department of corrections and appointed by the director of the department of corrections may participate on the review team, except when the provider against whom the complaint was filed was employed by the department of corrections.

(4) The members of a review team are appointed by the department from the listing of health care and rehabilitative service providers with correctional experience who have been submitted by each respective board, a county detention center administrator, or the department of corrections as provided in subsection (2). A review team shall meet at least twice a year. Any travel, lodging, meal, or miscellaneous costs incurred by a review team may be recovered through a memorandum of understanding with the agencies who provide medical services to inmates or may be assessed to the licensing or certifying boards of health care and rehabilitative service providers.

(5) The review team shall review each complaint with regard to the health care or rehabilitative services provider's scope of practice. A decision on whether or not to forward the complaint must be made by the majority of the review team. The review team shall submit a written response regarding the decision to the inmate, the county detention center administrator or the department of corrections, and the health care or rehabilitative services provider. If the decision is to not forward the complaint for action under 37-1-308, a record of the complaint may not be forwarded to any licensing or certifying board, but must be retained by the department.

History: En. Sec. 2, Ch. 375, L. 1999.

Part 4

Uniform Regulations for Licensing Programs Without Boards

37-1-401. Uniform regulation for licensing programs without boards -- definitions.

As used in this part, the following definitions apply:

(1) "Complaint" means a written allegation filed with the department that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a complaint or other information before the department, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the department;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether the department should seek an injunction.

(4) "License" means permission in the form of a license, permit, endorsement, certificate, recognition, or registration granted by the state of Montana to engage in a business activity or practice at a specific level in a profession or occupation governed by:

(a) Title 37, chapter 35, 72, or 76; or

(b) Title 50, chapter 39, 74, or 76.

(5) "Profession" or "occupation" means a profession or occupation regulated by the department under the provisions of:

(a) Title 37, chapter 35, 72, or 76; or

(b) Title 50, chapter 39, 74, or 76.

History: En. Sec. 1, Ch. 481, L. 1997; amd. Sec. 111, Ch. 483, L. 2001; amd. Sec. 21, Ch. 410, L. 2003.

37-1-402. Unprofessional conduct -- complaint -- investigation -- immunity. (1) A person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have violated a requirement of this part, the department may investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation.

(3) A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

History: En. Sec. 2, Ch. 481, L. 1997.

37-1-403. Notice -- request for hearing. (1) If the department determines that reasonable cause exists supporting the allegation made in a complaint, the department legal staff shall prepare a notice and serve the alleged violator. The notice may be served by certified mail to the current address on file with the department or by other means authorized by the Montana Rules of Civil Procedure.

(2) A licensee or license applicant shall give the department the licensee's or applicant's current address and any change of address within 30 days of the change.

(3) The notice must state that the licensee or license applicant may request a hearing to contest the charge or charges. A request for a hearing must be in writing and must be received in the offices of the department within 20 days after the licensee's receipt of the notice. Failure to request a hearing constitutes a default on the charge or charges, and the department may enter a decision on the basis of the facts available to it.

History: En. Sec. 3, Ch. 481, L. 1997.

37-1-404. Hearing -- adjudicative procedures. The procedures in Title 2, chapter 4, governing adjudicative proceedings before agencies, the Montana Rules of Civil Procedure, and the Montana Rules of Evidence govern a hearing under this part. The department has all the powers and duties granted by Title 2, chapter 4.

History: En. Sec. 4, Ch. 481, L. 1997.

37-1-405. Findings of fact -- order -- report. (1) If the department finds by a preponderance of the evidence, following a hearing or on default, that a violation of this part has occurred, the department shall prepare and serve findings of fact, conclusions of law, and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated this part, the department shall prepare and serve an order of dismissal of the charges.

(2) The department may report the issuance of a notice and final order to:

(a) the person or entity who brought to the department's attention information that resulted in the initiation of the proceeding;
(b) appropriate public and private organizations that serve the profession or occupation; and
(c) the public.

History: En. Sec. 5, Ch. 481, L. 1997.

37-1-406. Sanctions -- stay -- costs -- stipulations. (1) Upon a decision that a licensee or license applicant has violated this part or is unable to practice with reasonable skill and safety due to a physical or mental condition or upon stipulation of the parties as provided in subsection (4), the department may issue an order providing for one or any combination of the following sanctions:

- (a) revocation of the license;
- (b) suspension of the license for a fixed or indefinite term;
- (c) restriction or limitation of the practice;
- (d) satisfactory completion of a specific program of remedial education or treatment;
- (e) monitoring of the practice by a supervisor approved by the disciplining authority;
- (f) censure or reprimand, either public or private;
- (g) compliance with conditions of probation for a designated period of time;
- (h) payment of a fine not to exceed \$1,000 for each violation;
- (i) denial of a license application;
- (j) refund of costs and fees billed to and collected from a consumer.

(2) Any fine collected by the department as a result of disciplinary actions must be deposited in the state general fund.

(3) A sanction may be totally or partly stayed by the department. To determine which sanctions are appropriate, the department shall first consider the sanctions that are necessary to protect or compensate the public. Only after the determination has been made may the department consider and include in the order any requirements designed to rehabilitate the licensee or license applicant.

(4) The licensee or license applicant may enter into a stipulated agreement resolving potential or pending charges that includes one or more of the sanctions in this section. The stipulation is an informal disposition for the purposes of 2-4-603.

(5) A licensee shall surrender a suspended or revoked license to the department within 24 hours after receiving notification of the suspension or revocation by mailing the license or delivering it personally to the department.

History: En. Sec. 6, Ch. 481, L. 1997.

37-1-407. Appeal. A person who is disciplined or denied a license may appeal the decision to the district court as provided in Title 2, chapter 4.

History: En. Sec. 7, Ch. 481, L. 1997.

37-1-408. ReinstateMENT. A licensee whose license has been suspended or revoked under this part may petition the department for reinstatement after an interval set by the department in the order. The department may hold a hearing on the petition and may deny the petition or order reinstatement and impose terms and conditions as provided in 37-1-312. The department may require the successful completion of an examination as a condition of reinstatement and may treat a licensee whose license has been revoked or suspended as a new applicant for purposes of establishing the requisite qualifications of licensure.

History: En. Sec. 8, Ch. 481, L. 1997.

37-1-409. Enforcement of fine. (1) If payment of a fine is included in an order and timely payment is not made as directed in the order, the department may enforce the order for payment in the district court of the first judicial district.

(2) In a proceeding for enforcement of an order of payment of a fine, the order is conclusive proof of the validity of the order of payment and the terms of payment.

History: En. Sec. 9, Ch. 481, L. 1997.

37-1-410. Unprofessional conduct. The following is unprofessional conduct for a licensee or license applicant governed by this chapter:

(1) being convicted, including a conviction following a plea of nolo contendere and regardless of a pending appeal, of a crime relating to or committed during the course of practicing the person's profession or occupation or involving violence, the use or sale of drugs, fraud, deceit, or theft;

(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(5) making a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(7) the denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal or under judicial review or has been satisfied.

(8) failure to comply with a term, condition, or limitation of a license by final order of the department;

(9) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(10) misappropriating property or funds from a client or workplace or failing to comply with the department's rule regarding the accounting and distribution of a client's property or funds;

(11) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, failure to respond to department inquiries regarding a complaint against the licensee or license applicant, or the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action or use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(12) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice the profession or occupation by use of the licensee's license.

History: En. Sec. 10, Ch. 481, L. 1997.

37-1-411. Practice without license -- investigation of complaint -- injunction -- penalties. (1) The department may investigate a complaint or other information received concerning practice by an unlicensed person of a profession or occupation governed by this part.

(2) The department may file an action to enjoin a person from practicing, without a license, a profession or occupation governed by this part.

History: En. Sec. 11, Ch. 481, L. 1997; amd. Sec. 5, Ch. 230, L. 1999.

37-1-412. Violation of injunction -- penalty. (1) A person who has been enjoined and who violates an injunction issued pursuant to a proceeding under this part may be held in contempt of court and shall pay a civil penalty, as determined by the court, of not more than \$5,000. Fifty percent of the penalty must be deposited in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund.

(2) A person subject to an injunction for practicing without a license may also be subject to criminal prosecution. In a complaint for an injunction or in an affidavit, information, or indictment alleging that a person has engaged in unlicensed practice, it is sufficient to charge that the person engaged in the unlicensed practice of a licensed profession or occupation on a certain day in a certain county without averring further or more particular facts concerning the violation.

(3) Unless otherwise provided by statute, a person practicing a licensed profession or occupation in this state without complying with the licensing provisions of this title is guilty of a misdemeanor punishable by a fine of not less than \$250 or more than \$1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of this chapter constitutes a separate offense.

History: En. Sec. 12, Ch. 481, L. 1997; amd. Sec. 6, Ch. 230, L. 1999.

37-1-413. Department authority. For each licensing program regulated by the department under this part, the department is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding licensees and license applicants and regarding possible unlicensed practice.

History: En. Sec. 4, Ch. 230, L. 1999.

CHAPTER 67

ENGINEERS AND LAND SURVEYORS

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- 37-67-320. Sole proprietorships, firms, partnerships, and corporations -- requirements -- exceptions.
- 37-67-321. Emeritus status.
- 37-67-322 through 37-67-330 reserved.
- 37-67-331. Revocation, suspension, or refusal to renew license -- grounds -- procedure -- reinstatement.
- 37-67-332. Violations -- penalties -- enforcement.

Chapter Cross-References

- Construction contracts, Title 18, ch. 2.
- Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.
- Limitations on actions arising out of work on improvements to real property, 27-2-208.
- Professional service corporations, Title 35, ch. 4.
- Exemption of engineers from licensure as sanitarian, 37-40-102.
- Building construction standards, Title 50, ch. 60.
- Professional land surveyor -- entry on land -- trespass exception, 70-16-111.
- Corner Recordation Act of Montana -- surveys and coordinates, Title 70, ch. 22.
- Surveying -- actions arising from, 70-28-113.

Part 1

General

37-67-101. Definitions. As used in this chapter, the following definitions apply:

- (1) "Board" means the board of professional engineers and professional land surveyors provided for in 2-15-1763.
- (2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(3) "Engineer intern" means a person who complies with the requirements for education, experience, and character and has passed an examination in the fundamental engineering subjects, as provided in this chapter.

(4) "Engineering survey" means all survey activities required to support the sound conception, planning, design, construction, maintenance, operation, and association of engineering projects, but excludes the surveying of real property for the establishment of land boundaries, rights-of-way, easements, and the dependent or independent surveys or resurveys of the public land survey system.

(5) "Land surveyor intern" means a person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying, as provided in this chapter.

(6) (a) "Practice of engineering" means:

(i) any service or creative work the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to the services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, planning the use of water, teaching of advanced engineering subjects, engineering surveys, and the inspection of construction for the purpose of ensuring compliance with drawings and specifications;

(ii) any of the functions described in subsection (6)(a)(i) that embrace the services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of mechanical, electrical, hydraulic, pneumatic, or thermal nature insofar as they involve safeguarding life, health, or property.

(b) The term includes other professional services necessary to the planning, progress, and completion of any engineering services.

(c) The term does not include the work ordinarily performed by persons who operate or maintain machinery or equipment, communication lines, signal circuits, electric powerlines, or pipelines.

(7) "Practice of land surveying" means any service or work, the performance of which requires the application of special knowledge of the principles of mathematics, physical sciences, applied sciences, and:

(a) the principles of property boundary law to the recovery and preservation of evidence pertaining to earlier land surveys;

(b) teaching of land surveying subjects;

(c) measurement and allocation of lines, angles, elevations, and coordinate systems;

(d) location of natural and constructed features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water, including work for the determination of areas and volumes;

(e) monumenting of property boundaries;

(f) platting and layout of lands and the subdivisions of land, including the alignment and grades of streets and roads in subdivisions;

(g) preparation and perpetuation of maps, plats, field note records, and property descriptions; and

(h) locating, relocating, establishing, reestablishing, laying out, or retracing of any property line or boundary of any tract of land or road, right-of-way, easement, right-of-way easement, alignment, or elevation of any of the fixed works embraced within the practice of engineering.

(8) "Professional engineer" means a person who, by reason of special knowledge and use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and engineering experience, is qualified to practice engineering and who has been licensed as a professional engineer by the board.

(9) "Professional land surveyor" means a person who:

(a) has been licensed as a land surveyor by the board;

(b) is a professional specialist in the technique, analysis, and application of measuring land;

(c) is skilled and educated in the principles of mathematically related physical and applied sciences, relevant requirements of law for adequate evidence, and all requisites to the surveying of real property; and

(d) is engaged in the practice of land surveying.

(10) "Responsible charge" means direct charge and control and personal supervision either of engineering work or of land surveying. Only a professional engineer or a professional land surveyor may legally assume responsible charge under this chapter.

History: En. Sec. 2, Ch. 366, L. 1975; R.C.M. 1947, 66-2350(part); amd. Sec. 25, Ch. 22, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 553, L. 1985; amd. Sec. 1, Ch. 108, L. 1995; amd. Sec. 150, Ch. 483, L. 2001; amd. Sec. 49, Ch. 492, L. 2001.

37-67-102. Representation as practitioner to be considered as practice. (1)

A person must be considered to practice or offer to practice engineering, within the meaning and intent of this chapter, who:

(a) practices any branch of the profession of engineering;

(b) by verbal claim, sign, advertisement, letterhead, card, or in any other way represents that the person is a professional engineer or through the use of some other title implies that the person is a professional engineer or is licensed under this chapter; or

(c) represents that the person is able to perform or does perform any engineering service or work or any other service designated by the practitioner that is recognized as engineering.

(2) A person must be considered to practice or offer to practice land surveying, within the meaning and intent of this chapter, who:

(a) engages in land surveying;

(b) by verbal claim, sign, letterhead, card, or in any other way represents that the person is a professional land surveyor or through the use of some other title implies that the person is a professional land surveyor; or

(c) represents that the person is able to perform or does perform any land surveying service or work or any other service designated by the practitioner that is recognized as land surveying.

History: En. 66-2369 by Sec. 17, Ch. 366, L. 1975; R.C.M. 1947, 66-2369; amd. Sec. 3, Ch. 553, L. 1985; amd. Sec. 50, Ch. 492, L. 2001.

37-67-103. Exemptions. The following are exempt from coverage under this chapter:

- (1) the practice of any other legally recognized professions or trades;
- (2) the mere execution of work by a contractor, as distinguished from its planning or design or the supervision of the construction of work as a lead supervisor or superintendent;
- (3) the work of an employee or a subordinate of a person holding a license under this chapter or an employee of a person practicing lawfully under this chapter if the work does not include final engineering or land surveying designs or decisions and is done under the direct supervision of a person holding a license under this chapter or a person practicing lawfully under this chapter;
- (4) the practice of professional engineering by licensed architects when the practice is purely incidental to their practice of architecture.

History: En. 66-2367 by Sec. 15, Ch. 366, L. 1975; R.C.M. 1947, 66-2367; amd. Sec. 4, Ch. 553, L. 1985; amd. Sec. 51, Ch. 492, L. 2001.

Part 2

Board of Professional Engineers and Professional Land Surveyors

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1763.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

37-67-201. Organization -- meetings -- seal. (1) The board shall hold at least two regular meetings each year. Special meetings must be held at the time that the rules of the board provide. Notice of all meetings must be given in the manner that the rules provide.

(2) The board shall elect annually the following officers: a presiding officer, a vice presiding officer, and a secretary.

(3) The board shall adopt an official seal.

History: (1) thru (3)En. Sec. 8, Ch. 150, L. 1957; Sec. 66-2331, R.C.M. 1947; redes. 66-2352 by Sec. 3, Ch. 366, L. 1975; amd. Sec. 1, Ch. 317, L. 1977; Sec. 66-2352, R.C.M. 1947; (4)En. Sec. 9, Ch. 150, L. 1957; amd. Sec. 3, Ch. 282, L. 1969; Sec. 66-2332, R.C.M. 1947; redes. 66-2353 by Sec. 3, Ch. 366, L. 1975; Sec. 66-2353, R.C.M. 1947; R.C.M. 1947, 66-2352, 66-2353(part); amd. Sec. 4, Ch. 408, L. 1979; amd. Sec. 52, Ch. 492, L. 2001.

Cross-References

Disrupting meeting as disorderly conduct, 45-8-101.

37-67-202. Rulemaking. The board may adopt rules, including rules of procedure, reasonably necessary for the proper performance of its duties and the regulation of the proceedings before it.

History: En. Sec. 9, Ch. 150, L. 1957; amd. Sec. 3, Ch. 282, L. 1969; Sec. 66-2332, R.C.M. 1947; redes. 66-2353 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2353(part); amd. Sec. 121, Ch. 429, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Power of hearings officer to issue subpoenas, 2-4-611.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

37-67-203. Compensation of board members -- expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 6, Ch. 150, L. 1957; Sec. 66-2329, R.C.M. 1947; amd. Sec. 40, Ch. 439, L. 1975; redes. 66-2351 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2351; amd. Sec. 32, Ch. 474, L. 1981.

37-67-204. Record of proceedings -- register of applicants. (1) The department shall keep a record of its proceedings and a register of the board's proceedings.

(2) The department shall keep a register of applicants for licensure, which must show:

- (a) the name, age, and residence of each applicant;
- (b) the date of the application;
- (c) the place of business of the applicant;
- (d) the applicant's educational and other qualifications;
- (e) the branch or branches of engineering in which the applicant qualified;
- (f) whether an examination was required;
- (g) whether the applicant was rejected;
- (h) whether a license was granted;
- (i) the date of the action of the board; and
- (j) other information considered necessary by the board.

(3) The records of the department are *prima facie* evidence of the proceedings of the board, and a transcript of the proceedings, certified by the department, is admissible in evidence as if the original were produced.

History: En. Sec. 11, Ch. 150, L. 1957; Sec. 66-2334, R.C.M. 1947; amd. Sec. 27, Ch. 93, L. 1969; amd. Sec. 217, Ch. 350, L. 1974; redes. 66-2355 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2355; amd. Sec. 53, Ch. 492, L. 2001.

Cross-References

- Public records, Title 2, ch. 6.
- Preservation of records, Title 22, ch. 3, part 2.
- Contents of writings, recordings, and photographs, Art. X, M.R.Ev. (see Title 26, ch. 10).
- Duty of Department to keep records, 37-1-101.

Part 3

Licensing

Part Cross-References

- Oath defined, 1-1-201.
- Proof of execution, Title 1, ch. 5, part 3.
- Power of notary to take acknowledgments, 1-5-416.
- Licensing to follow contested case procedure, 2-4-631.
- Recognition of out-of-state licenses during disaster or emergency, 10-3-204.
- Duty of Department to administer and grade examinations and to investigate unprofessional conduct, 37-1-101.
- Reporting disciplinary actions against licensees, 37-1-105.
- Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
- Licensing boards to establish fees commensurate with costs, 37-1-134.
- Licensing investigation and review -- record access, 37-1-135.
- Grounds for disciplinary action as grounds for license denial -- conditions to new licenses, 37-1-137.
- Licensure of criminal offenders, Title 37, ch. 1, part 2.
- Perjury, 45-7-201.
- False swearing, 45-7-202.
- Nondiscrimination in licensing, 49-3-204.

37-67-301. License required to practice or offer to practice. In order to safeguard life, health, and property and to promote the public welfare, a person in either a public or private capacity practicing or offering to practice engineering or land surveying is required to submit evidence that the person is qualified to practice and is licensed as provided in this chapter. It is unlawful for a person to practice or to offer to practice in this state engineering or land surveying or to use in connection with the person's name or otherwise assume, use, or advertise any title or description tending to convey the impression that the person is a professional engineer or a professional land surveyor unless the person has been licensed under the provisions of this chapter.

History: En. Sec. 1, Ch. 150, L. 1957; Sec. 66-2324, R.C.M. 1947; redes. 66-2349 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2349; amd. Sec. 6, Ch. 553, L. 1985; amd. Sec. 54, Ch. 492, L. 2001.

37-67-302. Practice without a license a public nuisance. The practice of engineering or land surveying, as defined herein, without a license is hereby declared to be a public nuisance.

History: En. Sec. 9, Ch. 150, L. 1957; amd. Sec. 3, Ch. 282, L. 1969; Sec. 66-2332, R.C.M. 1947; redes. 66-2353 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2353(part).

Cross-References

Nuisances, Title 27, ch. 30.

37-67-303. Application -- contents -- examination -- fees. (1) An application for licensure must be on a form furnished by the department that provides for a detailed summary of the applicant's technical work and that must contain the required references.

(2) The application fee for an engineer intern is as prescribed by the board and must accompany the application. An additional fee is not required for the issuance of a certificate.

(3) The application fee for licensure as a professional engineer is as prescribed by the board for those holding a board-approved engineer intern certificate.

(4) An applicant for a license as a professional engineer shall file an application and satisfactorily pass an examination prescribed by the board. Upon approval of an application for licensure and passage of the required examination as a professional engineer, the department shall issue a license as a professional engineer.

(5) The application fee for a land surveyor intern is as prescribed by the board and must accompany the application. An additional fee is not required for issuance of a certificate.

(6) The application fee for licensure as a professional land surveyor is as prescribed by the board for those holding a board-approved land surveyor intern certificate. Upon approval of an application for licensure as a professional land surveyor and passage of the required examinations, the department shall issue a license as a professional land surveyor.

(7) (a) The application fee for licensure as both a professional engineer and professional land surveyor is as prescribed by the board for those holding board-approved engineer intern and land surveyor intern certificates.

(b) The fee must accompany the application. Upon approval of an application for licensure as a professional engineer and professional land surveyor and passage of the required examinations, the department shall issue a license.

(8) If the board denies the issuance of a license to any applicant, the initial fee deposited must be retained as an application fee.

History: En. Sec. 14, Ch. 150, L. 1957; Sec. 66-2337, R.C.M. 1947; amd. Sec. 5, Ch. 282, L. 1969; amd. Sec. 2, Ch. 364, L. 1971; amd. Sec. 219, Ch. 350, L. 1974; amd. Sec. 7, Ch. 215, L. 1975; redes. 66-2358 by Sec. 6, Ch. 366, L. 1975; amd. Sec. 21, Ch. 101, L. 1977; amd. Sec. 3, Ch. 317, L. 1977; R.C.M. 1947, 66-2358(1) thru (8); amd. Sec. 5, Ch. 408, L. 1979; amd. Sec. 66, Ch. 345, L. 1981; amd. Sec. 1, Ch. 489, L. 1981; amd. Sec. 7, Ch. 553, L. 1985; amd. Sec. 1, Ch. 72, L. 1987; amd. Sec. 2, Ch. 108, L. 1995; amd. Sec. 55, Ch. 492, L. 2001; amd. Sec. 13, Ch. 196, L. 2003; amd. Sec. 108, Ch. 467, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 467 in (1) after "be on" substituted "a form" for "forms prescribed by the board and" and after "department" substituted "that provides for" for "must contain statements made under oath showing the applicant's education and"; in (3) after "holding" substituted "a board-approved" for "an" and after "certificate" deleted "validated for Montana. For those holding a valid engineer intern certificate from some other state, the application fee is as prescribed by the board, which includes the cost of verification of engineer intern certification or licensure. Upon approval of an application for licensure and passage of the required examination as a professional engineer, the department shall issue a license as a professional engineer"; deleted former (4) that read: "(4) The department, subject to approval by the board, may, on approval of the application and payment of an application fee as prescribed by the board, issue a license as a professional engineer to a person who holds a certificate of qualification or licensure issued to the person by the committee on national engineering certification of the national council of examiners for engineering and surveying or by a state, territory, or possession of the United States or by another country if the applicant's qualifications meet the requirements of this chapter and the rules of the board"; inserted (4) regarding license application, examination, and issuance; in (6) in first sentence after "holding a" inserted "board-approved" and after "certificate" deleted "validated in Montana. For those holding a valid land surveyor intern certificate from some other state, the application fee is as prescribed by the board, which includes cost of verification of the certification"; in (7)(a) after "holding" inserted "board-approved" and after "certificates" deleted "validated in Montana. For those holding valid engineer intern and land surveyor intern certificates from another jurisdiction, the application fee is as prescribed by the board"; and made minor changes in style. Amendment effective July 1, 2005.

37-67-304. Local government not to impose fee or examination. A license fee or examination may not be imposed by a local government on a person licensed under this chapter to practice engineering or land surveying.

History: En. Sec. 14, Ch. 150, L. 1957; Sec. 66-2337, R.C.M. 1947; amd. Sec. 5, Ch. 282, L. 1969; amd. Sec. 2, Ch. 364, L. 1971; amd. Sec. 219, Ch. 350, L. 1974; amd. Sec. 7, Ch. 215, L. 1975; redes. 66-2358 by Sec. 6, Ch. 366, L. 1975; amd. Sec. 21, Ch. 101, L. 1977; amd. Sec. 3, Ch. 317, L. 1977; R.C.M. 1947, 66-2358(9); amd. Sec. 3, Ch. 108, L. 1995; amd. Sec. 56, Ch. 492, L. 2001.

37-67-305. General qualifications of applicants for licensure as professional engineer or certification as engineer intern. To be eligible for admission to an examination for professional engineer or engineer intern, an applicant must be of good character and reputation. The applicant shall submit five references with the application for licensure as a professional engineer. Three references must be from professional engineers with personal knowledge of the applicant's engineering experience. In the case of an application for certification as an engineer intern, the applicant shall submit three character references.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part); amd. Sec. 4, Ch. 108, L. 1995; amd. Sec. 57, Ch. 492, L. 2001.

37-67-306. Qualifications of applicant for licensure as professional engineer. The following is considered minimum evidence satisfactory to the board that the applicant is qualified for licensure as a professional engineer:

(1) A graduate of an engineering or engineering technology curriculum of 4 years or more approved by the board as being of satisfactory standing, with a specific record of an additional 4 years or more of progressive experience on engineering projects under the direct supervision of a professional engineer, unless exempt under 37-67-320(2), and who has passed examinations of a grade and character that indicate to the board that the applicant may be competent to practice engineering, must be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing the examinations, the applicant must be granted a license to practice engineering in this state if the applicant is otherwise qualified.

(2) A graduate of a related science curriculum of 4 years or more, other than engineering or engineering technology, with a specific record of 8 years or more of progressive experience on engineering projects of a grade and character that indicate to the board that the applicant may be competent to practice engineering, may be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing the examinations, the applicant must be granted a license to practice engineering in this state if the applicant is otherwise qualified.

(3) A graduate of an engineering or related science curriculum of 4 years or more, with a specific record of 20 years or more of progressive experience on engineering projects, of which at least 10 of those years the applicant has been in charge of important engineering projects, of a grade and character that indicate to the board that the applicant may be competent to practice engineering, must be admitted to an 8-hour written examination in the principles and practices of engineering. Upon passing the examination, the applicant must be granted a license to practice engineering in this state if the applicant is otherwise qualified.

(4) Teaching engineering in a college or university offering an approved engineering curriculum of 4 years or more may be considered as engineering experience in these requirements if research, product development, or consulting has been a concurrent activity.

(5) A person who holds a doctorate degree in engineering from an institution with an engineering program approved by the board and the engineering accreditation commission of the accreditation board for engineering and technology or the Canadian engineering accreditation board and who provides a specific record of at least 4 years of progressive experience on engineering projects of a grade and character that indicate to the board that the applicant may be competent to practice engineering must be admitted to an 8-hour written examination in the principles and practices of engineering. Upon passing the examination, the applicant must be issued a license to practice engineering in this state if the applicant is otherwise qualified.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part); amd. Sec. 2, Ch. 59, L. 1985; amd. Sec. 1, Ch. 107, L. 1995; amd. Sec. 58, Ch. 492, L. 2001.

37-67-307. Qualifications of applicant for registration as engineer intern.

The following must be considered as minimum evidence that the applicant is qualified for certification as an engineer intern:

(1) A graduate of an engineering or engineering technology curriculum of 4 years or more, approved by the board as being of satisfactory standing, must be admitted to an 8-hour written examination in the fundamentals of engineering. Upon passing the examination, the applicant must be certified or enrolled as an engineer intern if the applicant is otherwise qualified.

(2) A graduate of a related science curriculum of 4 years or more, other than engineering or engineering technology, with a specific record of 4 or more years of progressive experience on engineering projects of a grade and character satisfactory to the board must be admitted to an 8-hour written examination in the fundamentals of engineering. Upon passing the examination, the applicant must be certified or enrolled as an engineer intern if the applicant is otherwise qualified.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(1)(b); amd. Sec. 1, Ch. 59, L. 1985; amd. Sec. 5, Ch. 108, L. 1995.

37-67-308. General qualifications of applicants for licensure as professional land surveyor or certification as land surveyor intern. (1) To be eligible for admission to an examination for professional land surveyor or land surveyor intern, an applicant must be of good character and reputation. The applicant shall submit five references with the application for licensure as a professional land surveyor. Three of the references must be from professional land surveyors having personal knowledge of the applicant's land surveying experience. In the case of an application for certification as a land surveyor intern, the applicant shall submit three references, one of which must be from a professional land surveyor having personal knowledge of the applicant's land surveying experience.

(2) The evaluation of a land surveyor applicant's qualifications involves a consideration of the applicant's education, technical and land surveying experience, exhibits of land surveying projects that the applicant has been in charge of, recommendations by references, and a review of these categories. The board may require an interview if it considers one necessary.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part); amd. Sec. 2, Ch. 489, L. 1981; amd. Sec. 1, Ch. 354, L. 1983; amd. Sec. 8, Ch. 553, L. 1985; amd. Sec. 2, Ch. 72, L. 1987; amd. Sec. 6, Ch. 108, L. 1995; amd. Sec. 59, Ch. 492, L. 2001.

37-67-309. Qualifications of applicant for licensure as professional land surveyor. One of the following must be considered as minimum evidence to the board that the applicant is qualified for licensure as a professional land surveyor:

(1) The applicant has a bachelor of science degree in a board-approved curriculum that includes a minimum of 40 quarter credit hours in surveying techniques, principles, and practices; the applicant presents evidence satisfactory to the board that, in addition, the applicant has had at least 4 years of combined office and field experience in land surveying, with a minimum of 3 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor; and the applicant has passed the examinations required by the board.

(2) The applicant has 2 years of formal education in a board-approved curriculum above high school level, with at least 90 quarter credit hours that include a minimum of 40 quarter credit hours in surveying techniques, principles, and practices, or equivalent semester hours passed, or the equivalent approved by the board; the applicant presents evidence satisfactory to the board that, in addition, the applicant has had at least 6 years of combined office and field experience in land surveying satisfactory to the board, with a minimum of 4 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor; and the applicant has passed the examinations required by the board.

(3) The applicant has a bachelor of science degree in a board-approved curriculum and presents evidence satisfactory to the board that, in addition, the applicant has had at least 6 years of combined office and field experience in land surveying, with a minimum of 4 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor, and the applicant has passed the examinations required by the board.

(4) The applicant presents evidence satisfactory to the board that the applicant has had at least 10 years of combined office and field experience in land surveying satisfactory to the board, with a minimum of 6 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor, and has passed the examinations required by the board.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part); amd. Sec. 2, Ch. 354, L. 1983; amd. Sec. 9, Ch. 553, L. 1985; amd. Sec. 3, Ch. 72, L. 1987; amd. Sec. 60, Ch. 492, L. 2001.

37-67-310. Qualifications of applicant for certification as land surveyor intern. To qualify for certification as a land surveyor intern, an applicant shall present as evidence to the board at least one of the following:

(1) a bachelor of science degree in a board-approved curriculum that includes a minimum of 27 semester or 40 quarter credit hours in surveying techniques, principles, and practices and evidence of having passed the written examinations required by the board;

(2) at least 2 years of formal education in an approved curriculum that includes a minimum of 27 semester or 40 quarter credit hours in surveying techniques, principles, and practices, above high school level, with at least 60 semester or 90 quarter credit hours or equivalent semester hours passed, or the equivalent approved by the board, and evidence of having passed the written examinations required by the board;

(3) a bachelor of science degree in a board-approved curriculum and evidence satisfactory to the board that, in addition, the applicant has had at least 2 years of combined office and field experience in land surveying, with a minimum of 1 year in charge of land surveying projects under the supervision of a professional land surveyor, and evidence of having passed the written examinations required by the board; or

(4) evidence satisfactory to the board that the applicant has had at least 6 years of combined office and field experience in land surveying, with a minimum of 4 years of experience in charge of land surveying projects under the supervision of a professional land surveyor, and evidence of having passed the examinations required by the board.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(2)(b); amd. Sec. 3, Ch. 354, L. 1983; amd. Sec. 10, Ch. 553, L. 1985; amd. Sec. 4, Ch. 72, L. 1987; amd. Sec. 7, Ch. 108, L. 1995; amd. Sec. 61, Ch. 492, L. 2001.

37-67-311. Examinations -- fees -- third-party services. Examination requirements are as follows:

(1) The examinations must be held at times and places that the board directs. The board shall determine the acceptable grade on examinations.

(2) The board shall determine by rule the fees to be charged an applicant for each examination and reexamination. The fees must be commensurate with costs.

(3) The board may use a third party to provide examination and grading services.

(4) Examinations may be taken only after the applicant has met the other minimum requirements as provided in 37-67-305 through 37-67-310 and has been approved by the board for admission to the examinations as follows:

(a) The examination on engineering fundamentals consists of an 8-hour examination. Passing the examination qualifies the examinee for an engineer intern certificate if the examinee has met all other requirements for certification required by this chapter.

(b) The examination on principles and practice of engineering consists of an 8-hour examination on applied engineering. Passing this examination qualifies the examinee for licensure as a professional engineer if the examinee has met the other requirements for licensure required by this chapter.

(c) The examinations for land surveyor intern consist of two 4-hour examinations, designated as parts I and II, on the basic disciplines of land surveying. Passing these examinations qualifies the examinee for a land surveyor intern certificate if the examinee has met all other requirements for certification required by this chapter.

(d) The requirements and examinations for professional land surveyor consist of being a land surveyor intern, two examinations, designated as parts III and IV, on the applied disciplines of land surveying, and an examination specifically related to land surveying in Montana. Passing these examinations qualifies the examinee for licensure as a professional land surveyor if the examinee has met the other requirements for licensure required by this chapter.

History: En. 66-2359 by Sec. 7, Ch. 366, L. 1975; R.C.M. 1947, 66-2359; amd. Sec. 11, Ch. 553, L. 1985; amd. Sec. 8, Ch. 108, L. 1995; amd. Sec. 62, Ch. 492, L. 2001; amd. Sec. 14, Ch. 196, L. 2003.

37-67-312. Licensure of professional engineers without examination by comity or endorsement. (1) A person holding a certificate of registration to engage in the practice of engineering issued to the person by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or any foreign country, based on requirements that do not conflict with the provisions of this chapter and that were of a standard not lower than that specified in the applicable registration act in effect in this state at the time the certificate was issued, may upon application be licensed without further examination.

(2) A person holding a certificate of qualification issued by the committee on national engineering certification of the national council of examiners for engineering

and surveying and whose qualifications meet the requirements of this chapter may upon application be licensed without further examination.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(1)(a)(i); amd. Sec. 9, Ch. 108, L. 1995; amd. Sec. 63, Ch. 492, L. 2001.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-67-313. Comity consideration for land surveyors from other states. A person holding a certificate of registration to engage in the practice of land surveying issued by a proper authority of a state, territory, or possession of the United States or the District of Columbia, based on requirements that do not conflict with the provisions of this chapter and that were of a standard not lower than that specified in the applicable registration act in effect in this state at the time the certificate was issued, will be given comity consideration. However, the person may be asked to meet the conditions for taking examinations and to take them as the board considers necessary to determine the person's qualifications. In any event, the person shall pass a written examination that includes questions on laws, procedures, and practices pertaining to the practice of land surveying in this state.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(2)(a)(iii); amd. Sec. 12, Ch. 553, L. 1985; amd. Sec. 10, Ch. 108, L. 1995.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-67-314. Issuance of licenses -- seal of professional engineer or professional land surveyor -- enrollment card for interns. (1) The department shall issue to an applicant who, in the opinion of the board, has met the requirements of this chapter a license giving the licensee proper authority to engage in the practice of engineering or the practice of land surveying and to assume responsible charge of engineering or land surveying projects in this state. The license for a professional engineer must carry the designation "professional engineer" and for a professional land surveyor, "professional land surveyor". It must give the full name and serial number of the licensee and must be signed by the presiding officer and the secretary under the seal of the board.

(2) A license is *prima facie* evidence that the named person is entitled to all rights, privileges, and responsibilities of a professional engineer or professional land surveyor while the license remains unrevoked or unexpired.

(3) Each licensee may, upon licensure, obtain a seal of a design authorized by the board, bearing the licensee's name, serial number, and the legend "professional engineer" or "professional land surveyor". Plans, specifications, plats, drawings, reports, design information, and calculations prepared by a licensee must be signed with a written signature, dated, and stamped with the seal or a seal facsimile when issued. After the expiration of a license, it is unlawful for the licensee whose license has lapsed to affix or permit the seal and signature or seal facsimile to be affixed to any:

(a) plans, specifications, plats, drawings, reports, design information, or calculations; or

(b) projects for which the licensee was not in responsible charge.

(4) The department shall issue to any applicant who, in the opinion of the board, has met the requirements of this chapter an enrollment card as an engineer intern or land surveyor intern. The enrollment card must indicate that the applicant's name and status has been recorded with the board. The enrollment card does not authorize the holder to practice as a professional engineer or professional land surveyor.

History: En. 66-2360 by Sec. 8, Ch. 366, L. 1975; R.C.M. 1947, 66-2360; amd. Sec. 13, Ch. 553, L. 1985; amd. Sec. 11, Ch. 108, L. 1995; amd. Sec. 64, Ch. 492, L. 2001.

Cross-References

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

37-67-315. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 17, Ch. 150, L. 1957; Sec. 66-2340, R.C.M. 1947; amd. Sec. 7, Ch. 282, L. 1969; amd. Sec. 222, Ch. 350, L. 1974; amd. Sec. 8, Ch. 215, L. 1975; redes. 66-2361 by Sec. 9, Ch. 366, L. 1975; R.C.M. 1947, 66-2361; amd. Sec. 6, Ch. 408, L. 1979; amd. Sec. 67, Ch. 345, L. 1981; amd. Sec. 3, Ch. 489, L. 1981; amd. Sec. 8, Ch. 390, L. 1983; amd. Sec. 14, Ch. 553, L. 1985; amd. Sec. 2, Ch. 107, L. 1995; amd. Sec. 65, Ch. 492, L. 2001; amd. Sec. 56, Ch. 271, L. 2003.

37-67-316. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. 66-2365 by Sec. 13, Ch. 366, L. 1975; R.C.M. 1947, 66-2365(part); amd. Sec. 66, Ch. 492, L. 2001.

37-67-317. Deposit of moneys collected. The department shall collect all moneys under this chapter and shall deposit these moneys in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 10, Ch. 150, L. 1957; Sec. 66-2333, R.C.M. 1947; amd. Sec. 123, Ch. 147, L. 1963; amd. Sec. 28, Ch. 177, L. 1965; amd. Sec. 216, Ch. 350, L. 1974; redes. 66-2354 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2354; amd. Sec. 1, Ch. 277, L. 1983.

37-67-318. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 12, Ch. 150, L. 1957; Sec. 66-2335, R.C.M. 1947; amd. Sec. 218, Ch. 350, L. 1974; amd. and redes. 66-2356 by Sec. 4, Ch. 366, L. 1975; amd. Sec. 2, Ch. 317, L. 1977; R.C.M. 1947, 66-2356; amd. Sec. 7, Ch. 408, L. 1979; amd. Sec. 15, Ch. 553, L. 1985; amd. Sec. 67, Ch. 492, L. 2001.

37-67-319. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-2368 by Sec. 16, Ch. 366, L. 1975; R.C.M. 1947, 66-2368; amd. Sec. 26, Ch. 22, L. 1979; amd. Sec. 16, Ch. 553, L. 1985.

37-67-320. Sole proprietorships, firms, partnerships, and corporations -- requirements -- exceptions. (1) A sole proprietorship, firm, partnership, or corporation:

(a) may engage in the practice of engineering in this state if the sole proprietor or any member of the firm, partnership, or corporation who is in responsible charge of

engineering or land surveying work performed in this state is a professional engineer or a professional land surveyor, as appropriate;

(b) must have a professional engineer or professional land surveyor in residence who is in responsible charge of the engineering or land surveying work conducted in the office or place of business if the sole proprietorship, firm, partnership, or corporation is engaged in the practice of engineering or the practice of land surveying; and

(c) shall obtain a certificate of authorization from the board before engaging in the practice of engineering or the practice of land surveying.

(2) The provisions of subsection (1) do not apply to sole proprietorships, firms, partnerships, or corporations that are engaged in the practice of engineering or the practice of land surveying for their own benefit and do not practice or offer engineering or land surveying services to others.

History: En. Sec. 5, Ch. 553, L. 1985; amd. Sec. 12, Ch. 108, L. 1995; amd. Sec. 122, Ch. 429, L. 1995; amd. Sec. 68, Ch. 492, L. 2001.

37-67-321. Emeritus status. (1) A licensee who no longer practices engineering or land surveying may apply to the department for emeritus status.

(2) Upon receiving an application for emeritus status accompanied by the fee established by the board, the department shall issue a license of emeritus status to the applicant and record the applicant's name in the roster as an emeritus licensee, along with the date on which the licensee received emeritus status.

(3) An emeritus licensee may retain but may not use the licensee's seal and may not practice engineering or land surveying.

(4) The department shall reissue a license to an emeritus licensee who pays all application fees, meets all current requirements for licensure, and demonstrates to the board's satisfaction that for the 2 years preceding the application for licensure, the applicant has met requirements set by the board for maintaining professional competence.

History: En. Sec. 19, Ch. 553, L. 1985; amd. Sec. 69, Ch. 492, L. 2001; amd. Sec. 109, Ch. 467, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 467 in (1) near end, in (2) near middle, and in (4) at beginning substituted "department" for "board"; in (4) near end after "requirements" inserted "set by the board" and at end after "competence" deleted "established under 37-67-315"; and made minor changes in style. Amendment effective July 1, 2005.

37-67-322 through 37-67-330 reserved.

37-67-331. Revocation, suspension, or refusal to renew license -- grounds - procedure -- reinstatement. (1) The board may reprimand a licensee or revoke, suspend, or refuse to renew the license of a licensee found responsible for:

(a) fraud or deceit in obtaining a license;

- (b) gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a licensed professional engineer or professional land surveyor;
- (c) a felony;
- (d) a violation of rules for professional conduct for professional engineers and professional land surveyors adopted by the board;
- (e) failing to comply with the Corner Recordation Act if the person is a professional land surveyor.

(2) Any person may make charges of fraud, deceit, gross negligence, incompetency, or misconduct against a licensee. The charges must be made by affidavit, subscribed and sworn to by the person making them, and filed with the department. The charges must be investigated by the board. For purposes of investigation under this section, the board may require that a licensee meet with the board.

(3) The board may require a licensee to take a written or oral examination, or both, in a proceeding to reprimand the licensee or to revoke, suspend, or refuse to renew the license.

(4) If, after a hearing, five or more members of the board vote in favor of sustaining the charges, the board shall reprimand the licensee or suspend, refuse to renew, or revoke the license of the licensed professional engineer or professional land surveyor.

(5) The board, for reasons it considers sufficient, may reissue a license to a person whose license has been revoked if five or more members of the board vote in favor of the reissuance.

History: En. 66-2365 by Sec. 13, Ch. 366, L. 1975; R.C.M. 1947, 66-2365(part); amd. Sec. 8, Ch. 408, L. 1979; amd. Sec. 17, Ch. 553, L. 1985; amd. Sec. 13, Ch. 108, L. 1995; amd. Sec. 70, Ch. 492, L. 2001.

Cross-References

Oaths, Title 1, ch. 6.

Affidavits, Title 26, ch. 1, part 10.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Reporting disciplinary actions against licensees, 37-1-105.

Perjury, 45-7-201.

Corner Recordation Act of Montana, Title 70, ch. 22, part 1.

37-67-332. Violations -- penalties -- enforcement. (1) (a) A person commits a criminal offense if the person knowingly:

- (i) practices or offers to practice engineering or land surveying in this state without being licensed under this chapter;
- (ii) presents or attempts to use the license or the seal of another person;
- (iii) gives false or forged evidence to the board or department in obtaining a license;
- (iv) impersonates another licensee;
- (v) attempts to use an expired, revoked, or emeritus license; or
- (vi) violates a provision of this chapter.

(b) A person convicted under subsection (1)(a) shall be fined an amount of not less than \$100 or more than \$500 or be incarcerated in the county jail for a period not exceeding 3 months, or both.

(2) All officers of the law of this state or one of its political subdivisions shall enforce this chapter and prosecute persons violating it. The attorney general shall act as legal adviser of the board and render legal assistance necessary in carrying out this chapter.

(3) The board may apply to the appropriate court for an injunction against a person found by the board to have practiced or attempted or offered to practice engineering or land surveying in this state without a valid license.

(4) If a person violates an injunction against practice without a valid license, the court may impose a fine in an amount not to exceed \$25,000.

History: En. Sec. 23, Ch. 150, L. 1957; Sec. 66-2346, R.C.M. 1947; amd. Sec. 225, Ch. 350, L. 1974; redes. 66-2366 by Sec. 14, Ch. 366, L. 1975; R.C.M. 1947, 66-2366; amd. Sec. 18, Ch. 553, L. 1985; amd. Sec. 3, Ch. 107, L. 1995; amd. Sec. 71, Ch. 492, L. 2001.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Forgery, 45-6-325.

DEPARTMENT OF LABOR AND INDUSTRY

CHAPTER 101

BUSINESS STANDARDS DIVISION

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BUSINESS STANDARDS DIVISION
Subchapters 1 and 2 reserved

Subchapter 3

General Provisions

24.101.301 ABATEMENT OF RENEWAL FEES (1) Pursuant to 17-2-302, MCA, state programs that charge a fee for services are generally not permitted to let their cash balance exceed twice the program's annual appropriation. However, despite the best projections of a program, there may be times when cash balances exceed the amount authorized by statute. This rule is intended to provide a process for a program that needs to reduce its cash balance with a standard methodology to do so, in fair and equitable manner. This rule provides for an abatement of certain fees when the cash balance is excessive.

(2) Except as provided by (3), a program that has an excessive cash balance may abate the renewal fees for the program's licensees or registrants for one or more renewal cycles until the program's cash balance does not exceed the allowable maximum.

(a) The abatement of renewal fees may be the total amount of the renewal fee, or only a specified portion of the renewal fee.

(b) If a program has more than one category of renewals, the abatement must be made on a roughly proportional basis to fairly, equitably, reasonably and economically distribute the abatement among the program's licensees or registrants. The program may, for good cause, completely abate the renewal fee for certain classes of licensees or registrants and not for other classes, if the administrative cost of processing a reduced renewal fee for all classes is disproportionately high. In such a case, the program must attempt in any future abatements to equitably treat those classes of renewals which have borne a relatively higher proportion of renewal fees.

(c) The fact that the renewal fee is abated for any given renewal cycle does not excuse the licensee or registrant from otherwise fulfilling the renewal requirements, including submission of a renewal application and/or continuing education documentation. A program, to the extent it so provides by rule, may impose a late fee on untimely submissions of renewal applications or other required documentation.

(3) This rule does not apply to programs for which an exception to 17-2-302, MCA, exists and is applicable. As an example, a program with a three-year renewal cycle will have an apparent excess cash balance during the first year of the renewal cycle, based on a collection of three year's worth of fees for operations expenses.

(4) This rule does not relieve a program from the duty to establish fees at a level commensurate with costs.

(5) A licensing board attached to the department for administrative purposes may adopt the procedures specified in this rule by incorporating this rule by reference. Such an adoption of this rule authorizes the department to make such abatements as are appropriate, without further vote or action by the board. Incorporation by reference of this rule does not relieve the board of its obligations to set fees in a manner commensurate with costs. This rule does not relieve a board from its duty to undertake appropriate rulemaking to modify its fee structure when there are recurrent instances of cash balances in excess of the amount allowed by statute. (History: 37-1-101, MCA; IMP, 17-2-302, 17-2-303, 37-1-101, 37-1-134, MCA; NEW, 2004 MAR p. 2286, Eff. 9/24/04.)

DEPARTMENT OF LABOR AND INDUSTRY

Subchapter 4

Standardized Rules for Boards and Programs

24.101.401 PURPOSE (1) The purpose of this subchapter is to standardize similar functions and processes within the division and administratively attached boards, including, but not limited to:

- (a) setting standardized fees;
- (b) standardizing forms;
- (c) eliminating the need for a licensing board to issue routine licenses; and
- (d) setting uniform standards for license renewal. (History: 37-1-101, MCA; IMP, 37-1-101, 37-1-104, MCA; NEW, 2006 MAR p. 1583, Eff. 7/1/06.)

24.101.402 DEFINITIONS As used in conjunction with Title 37, MCA, the following definitions apply:

- (1) "Active status" means the license holder is afforded the rights and privileges to practice under the license while complying with the requirements as set by the licensing entity.
- (2) "Administrative fees" means a fee charged for products or services provided by the division.
- (3) "Department" means the Department of Labor and Industry.
- (4) "Disciplinary action" means the procedure by which unprofessional conduct is addressed by the licensing entity pursuant to the contested case hearing provisions of the Montana Administrative Procedure Act (MAPA).
- (5) "Division" means the Business Standards Division of the Department of Labor and Industry.
- (6) "Expired license" means a license for which the renewal requirements have not been met within 45 days to two years after the license renewal date. An expired license may be reactivated anytime within these two years.
- (7) "Inactive status" means an option provided by some licensing entities in which a licensee may retain a license but the licensee does not intend to practice, nor will the licensee engage in licensed activities at any time during the duration of the inactive status license. The licensee may wish to reactivate the inactive status license in the future. An inactive license must be renewed as prescribed by the licensing entity.
- (8) "Lapsed license" means a license that has not been renewed by the license renewal date. A lapsed license may be reactivated at anytime within 45 days following the license renewal date.
- (9) "Late penalty fee" means the fee that is required to be paid by a licensee upon renewal of a license if the licensee failed to renew the license by the renewal date.
- (10) "License history" means the progression of the license record from original licensure to the current status of the license provided to any requestor.
- (11) "License verification" means the documentation provided to another licensing entity that may include information supplied for original licensure or the license history information.
- (12) "New original license" means a license issued to an individual whose previous original license terminated and was not reinstated. In order to receive a new original license, all current requirements for obtaining an original license must be met including, but not limited to, submitting required application materials, successfully passing the required examinations as applicable, and paying the appropriate fees. The new original license number will remain the same as the original license number.
- (13) "Nonroutine application" means an application submitted to the division in which the application is defined as nonroutine either by the specific licensing entity's rules or by these

rules. In conflicts between the specific licensing entity's rules and these rules, the specific licensing entity's rules govern.

(a) A nonroutine application means that the applicant has one or more of the following:

(i) has pending or completed disciplinary action in this state, or pending or completed disciplinary action in another state, territory, or jurisdiction;

(ii) is restricted by the terms and conditions of a final order in a disciplinary matter;

(iii) is required to submit materials that require professional evaluation by another licensee or licensing entity;

(iv) has loss of documentation due to natural disaster or national emergency; or

(v) is foreign-educated, except for those foreign-educated applicants applying for licensure from the following:

(A) Board of Medical Examiners;

(B) Board of Professional Engineers and Professional Land Surveyors; or

(C) Board of Realty Regulation.

(14) "Original license" means the initial license issued to a licensee by the department after successfully fulfilling all licensure requirements for the first time.

(15) "Probationary license" means a license, that due to discipline taken against the licensee, signifies the license holder is afforded the rights and privileges to practice under the license while complying with the terms and conditions of a final order as issued by the licensing entity.

(16) "Reactivated license" means a lapsed or expired license that is renewed between the renewal date and two years following the renewal date. In order to reactivate a license, all renewal requirements must be met.

(17) "Reactivation of license" means activating a lapsed or expired license.

(18) "Renewal date" means the date by which an existing license must be renewed as listed in ARM 24.101.413. Renewal information must be submitted on or before the renewal date in order for a license to be renewed without the assessment of the late penalty fee.

(19) "Routine application" means an application submitted to the division in which the application is defined as routine either by the specific licensing entity's rules or by these rules. In conflicts between the specific licensing entity's rules and these rules, the specific licensing entity's rules govern.

(a) A routine application means that the applicant does not have one or more of the following:

(i) pending or completed disciplinary action in this state, or pending or completed disciplinary action in another state, territory, or jurisdiction;

(ii) is not restricted by the terms and conditions of a final order in a disciplinary matter;

(iii) is not required to submit materials that require professional evaluation by another licensee or licensing entity;

(iv) loss of documentation due to natural disaster or national emergency; or

(v) is foreign-educated, except for those foreign-educated applicants applying for licensure from the following:

(A) Board of Medical Examiners;

(B) Board of Professional Engineers and Professional Land Surveyors; or

(C) Board of Realty Regulation.

(20) "Standardized fee" means an administrative fee for a common product or service that is charged to division customers.

(21) "Suspended license" means a license, that due to discipline taken against the licensee, signifies the license holder is no longer afforded the rights and privileges to practice under the license for a period of time specified by the final order issued by the licensing entity.

(22) "Terminated license" means a license that has not been renewed or reactivated within two years of the renewal deadline. A terminated license may not be reactivated.

(History: 37-1-101, MCA; IMP, 37-1-130, 37-1-131, 37-1-141, MCA; NEW, 2006 MAR p. 1583, Eff. 7/1/06.)

24.101.403 FEES (1) Standardized fees, in addition to those fees charged by a specific licensing entity are as follows:

(a) duplicate license	\$ 5
(b) licensee lists or rosters	20
(c) photocopies per page (in excess of 20 pages)	.25
(d) certified copies per page (in excess of ten pages)	.50
(e) license history	20
(f) duplicate wall certificate	20
(g) returned check fee, including but not limited to, checks issued with nonsufficient funds, stop payment requests, or missing signatures	30
(h) license verification	20
(i) the license verification fee is waived for any licensing entity with a signed reciprocal agreement with another licensing entity and the licensing entities have agreed that no fees are to be charged;	
(i) status change fee from inactive to active during the licensure period is the difference between the cost of an inactive license and an active license renewal fee;	
(j) renewal fee for a suspended license is 50 percent of the renewal fee; and	
(k) renewal fee for a probationary license is the same as the renewal fee.	
(2) The late penalty fee for each renewal period a license has not been renewed shall be 100 percent of the renewal fee. The penalty fee is in addition to the renewal fee and must be paid for each renewal period that the license has not been renewed. If the license has not been renewed on or before the date set by ARM 24.101.413, the late penalty fee must be paid.	
(a) In the event a renewal fee has been abated, the late penalty fee still applies. The late penalty fee that must be paid is 100 percent of the renewal fee that would have been charged had the renewal fee not been abated.	
(3) When converting an inactive status license to an active status license, the difference between the inactive status fee and the active status fee must be paid for the remainder of the current renewal period.	
(4) When a military reservist renews a professional or occupational license after being discharged from active duty, the renewal fee will be the current renewal fee. No past fees accrued while the reservist was on active duty will be charged pursuant to 37-1-138, MCA.	
(5) All fees are nonrefundable. (History: 37-1-101, MCA; <u>IMP</u> , 27-1-717, 37-1-130, 37-1-134, 37-1-138, MCA; <u>NEW</u> , 2006 MAR p. 1583, Eff. 7/1/06.)	

Rules 24.101.404 through 24.101.406 reserved

24.101.407 LICENSING (1) The department will issue all licenses to those routine applicants who meet the licensing requirements and pay the required fees.

(2) The department will issue all licenses as directed by the governing board to those nonroutine applicants who meet the licensing requirements and pay the required fees. A nonroutine applicant may be asked to appear before the board prior to the final board decision

regarding the granting of a nonroutine license. (History: 37-1-101, MCA; IMP, 37-1-101, 37-1-130, MCA; NEW, 2006 MAR p. 1583, Eff. 7/1/06.)

24.101.408 RENEWED, LAPSED, EXPIRED, OR TERMINATED LICENSES (1) All licenses must be renewed on or before the renewal date as listed in, and in accordance with ARM 24.101.413. Late renewals must be accompanied by the fees as specified in ARM 24.101.403 and any other information required as if the renewal were submitted prior to the renewal date.

(a) A suspended license must be renewed in accordance with ARM 24.101.413 or the license will proceed to expire or terminate.

(2) If the license has not been renewed, the license shall be considered a lapsed, expired, or terminated license.

(a) A lapsed license may be reactivated within 45 days of the renewal date by submitting the required, completed renewal information and paying the required fees.

(b) Licenses not renewed within 45 days from the renewal date automatically expire. An expired license may be reactivated within two years of the renewal date by submitting the required, completed renewal information and paying the required fees.

(c) Licenses not renewed within two years from the renewal date automatically terminate. A terminated license may not be reactivated. A new original license must be obtained by completing the current requirements for a new application, including successfully passing the licensing examination if applicable.

(3) A licensee whose license has lapsed or expired, may not apply for a new license. A licensee must renew the license if it has lapsed or expired. All renewal requirements must be met and fees paid in order for a lapsed or expired license to be renewed. A new original license will be issued to a licensee whose license has terminated, provided all licensing requirements are met.

(4) A licensee who practices while a license is lapsed is not considered to be practicing without a license.

(5) A licensee who practices after a license has expired is considered to be practicing without a license and is subject to discipline provided by statute or rule.

(6) A former licensee who practices after a license is terminated is considered to be practicing without a license and is subject to cease and desist or a district court restraining order. (History: 37-1-101, 37-1-141, MCA; IMP, 37-1-101, 37-1-130, 37-1-141, MCA; NEW, 2006 MAR p. 1583, Eff. 7/1/06.)

Rules 24.101.409 through 24.101.412 reserved

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) Specific procedures and grace periods for renewal are set by department or board rule, or statute applicable to a particular profession, or 37-1-141, MCA. Such procedures shall take account of, and be based upon, the renewal dates in this rule. An existing license ends on the renewal date specified for each profession and occupation listed and must be renewed on or before this date.

(2) If a timely and sufficient application is submitted on or prior to such date, the applicant's continued practice is governed under 2-4-631, MCA. In order for an application to be timely and sufficient it must be:

- (a) completed with truthful information;
- (b) accompanied by other required information or documentation as applicable;
- (c) accompanied by the appropriate fee; and
- (d) submitted so that it bears a U.S. Postal Service post mark prior to or on the renewal date for the applicable profession; or

(e) submitted by using the online renewal service available on the department's website. Although the department strives to keep its website accessible at all times, licensees should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing the online renewal service do not excuse late renewals;

(i) online renewal transactions must be fully completed prior to midnight Mountain time on the renewal date.

(3) If the requirements of this rule are not met, a late penalty fee as specified in ARM 24.101.413 will be required in order to renew.

(4) The provisions of ARM 24.101.408 and 24.101.414 are applicable to all license renewals.

(5) The following are renewal dates for:

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(ab)	Professional Engineers and Professional Land Surveyors	Certificate of Authority	Biennially, Even Numbered Years	June 30
		Emeritus Status		
		Engineer Intern	Indefinite	
		Land Surveyor Intern	None, Indefinite	
		Professional Engineer	Biennially, Even Numbered Years	June 30
		Professional Engineer by Comity	Biennially, Even Numbered Years	June 30
		Professional Land Surveyor	Biennially, Even Numbered Years	June 30
		Professional Land Surveyor by Comity	Biennially, Even Numbered Years	June 30

(6) The following are nonrenewable licenses:

(a) temporary licenses issued by a licensing entity unless that licensing entity's rules provide otherwise;

(b) fireworks wholesalers;

(c) real estate appraiser mentors;

(d) pharmacy technicians in training;

(e) active temporary speech pathologists and audiologists;

(f) land surveyor intern, engineer intern, emeritus status license issued by the Board of Professional Engineers and Professional Land Surveyors;

(g) all licenses issued by the Board of Athletics end on June 30 of each year and the licensee must reapply;

(h) guide and professional guide licenses issued by the Board of Outfitters end on December 31 of each year and the licensee must reapply; and

(i) electrical contractor licenses issued by the State Electrical Board end on July 15 biennially and the licensee must reapply.

(7) The specific date by which each individual licensee is required to renew by can be obtained by contacting the licensing entity's office or by using the licensee lookup system available on the department's website. (History: 37-1-101, 37-1-141, MCA; IMP, 37-1-101, 37-

1-141, MCA; NEW, 1995 MAR p. 2140, Eff. 10/13/95; AMD, 1996 MAR p. 1373, Eff. 5/24/96; AMD, 1999 MAR p. 274, Eff. 2/12/99; AMD, 1999 MAR p. 2435, Eff. 10/22/99; TRANS, from Commerce & AMD, 2006 MAR p. 1583, Eff. 7/1/06.)

24.101.414 RENEWAL NOTIFICATION (1) The department shall send renewal notices to all licensees. Renewal notices shall be sent to the last known address in the division's records. It is the responsibility of the licensee to keep the division timely informed of the licensee's current mailing address. Failure to receive notice for renewal in no way releases the licensee from the obligation to renew in a timely manner, and shall not constitute a defense to practicing without a license. (History: 37-1-101, 37-1-141, MCA; IMP, 37-1-101, 37-1-130, 37-1-141, MCA; NEW, 2006 MAR p. 1583, Eff. 7/1/06.)

CHAPTER 183

BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS

NOTE: The Chapter 183 title has been changed from BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS to BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS. The title headings will be corrected as pages are replaced for other reasons.

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Rule 24.183.101 Board Organization

Subchapter 2

Procedural Rules

Rule 24.183.201 Procedural Rules

24.183.202 Public Participation Rules

Subchapter 3

Definitions

Rule 24.183.301 Definition of Responsible Charge for Professional Engineers and Land Surveyors

24.183.302 Direct Supervision

Subchapter 4

General Provisions

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24.183.405 Fee Abatement

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Licensing

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Licensure of Professional Engineers

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Uniform Standards for Monumentation, Certificates of Survey,
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Rule 24.183.2201 Introduction

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Subchapter 24

Complaint Procedures

- Rule 24.183.2401 Screening Panel
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Sub-Chapter 1

Organizational Rules

24.183.101 BOARD ORGANIZATION (1) The board of professional engineers and land surveyors hereby adopts and incorporates the organizational rules of the department of labor and industry as listed in chapter 1 of this title. (History: 37-67-202, MCA; IMP, 2-4-201, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff 7/1/81; TRANS, from Commerce, 2002 MAR p. 1756.)

Sub-Chapter 2

Procedural Rules

24.183.201 PROCEDURAL RULES (1) The board of professional engineers and land surveyors hereby adopts and incorporates the procedural rules of the department of labor and industry as listed in chapter 2 of this title. (History: 37-67-202, MCA; IMP, 2-4-201, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; TRANS, from Commerce, 2002 MAR p. 1756.)

24.183.202 PUBLIC PARTICIPATION RULES (1) The board of professional engineers and land surveyors hereby adopts and incorporates by this reference the public participation rules of the department of commerce as listed in chapter 2 of this title. (History: 37-67-202, MCA; IMP, 2-3-103, MCA; NEW 1978 MAR p. 77, Eff. 1/25/78; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; TRANS, from Commerce, 2002 MAR p. 1756.)

Sub-Chapter 3

Definitions

24.183.301 DEFINITION OF RESPONSIBLE CHARGE FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS (1) The term "responsible charge" directly relates to the degree of control a licensee is required to maintain while exercising independent control and direction of engineering or land surveying work and to the decisions which can be made only under the direct supervision of a professional engineer or a professional land surveyor.

(a) The degree of control necessary to be in responsible charge shall be such that the licensee:

(i) personally makes engineering or land surveying decisions, or reviews and approves proposed decisions prior to their implementation, including consideration of alternatives, whenever technical decisions are made. In making engineering or land surveying decisions, the licensee must be physically present or through the use of communication devices, can be available in a reasonable period of time; and

(ii) judges the qualifications of technical specialists and the validity and applicability of their recommendations before such recommendations are incorporated in the work.

(b) To be considered in responsible charge of a project, the professional licensee who signs engineering or land surveying documents must be capable of answering questions asked by equally qualified professionals. These questions would be relevant to the decisions made during the individual's participation in the project and require responses in sufficient detail to leave little question as to the licensee's technical knowledge of the work performed. It is not necessary to defend decisions as in an adversary situation, but only to demonstrate that the

individual in responsible charge made the decisions and possessed sufficient knowledge of the project to make the decisions.

(i) examples of questions to be answered by the engineer could relate to criteria for design, methods of analysis, methods of manufacture and construction, selection of materials and systems, economics of alternate solutions, and environmental considerations. The individual should be able to clearly define the degree of control and how it is exercised within the organization and geographically and to demonstrate that the engineer is answerable within that degree of control.

(ii) examples of questions to be answered by the land surveyor could relate to criteria for design, methods of analysis and conclusions made including, but not limited to, the retracement of government surveys, interpretation and construction of deeds, application of proportion methods and analysis of evidence related to unwritten property rights. The individual should be able to clearly define the degree of control and how it is exercised within the organization and geographically and to demonstrate that the land surveyor is answerable within that degree of control. (History: 37-67-202, MCA; IMP, 37-67-101, MCA; NEW, 2001 MAR p. 553, Eff. 4/6/01; TRANS, from Commerce, 2002 MAR p. 1756.)

24.183.302 DIRECT SUPERVISION (1) The term "direct supervision" means the licensee, by regular participation, has exercised directing, guiding and restraining power on matters embodied in the plans, designs, and advice involved in the engineering or land surveying work and accepts responsibility for the contents. After-the-fact review or checking of technical submissions does not satisfy the "exemption" provision of 37-67-103(3), MCA. (History: 37-67-202, MCA; IMP, 37-67-103, MCA; NEW, 2001 MAR p. 553, Eff. 4/6/01; TRANS, from Commerce, 2002 MAR p. 1756.)

Subchapter 4

General Provisions

24.183.401 BOARD ELECTED OFFICERS (1) The board shall elect from its members a presiding officer, vice-presiding officer and a secretary annually.

(2) The presiding officer shall be the executive officer of the board. When present, the presiding officer shall preside at all meetings and shall appoint such committees as the board may authorize from time-to-time. The presiding officer shall sign all certificates and other official papers and shall perform all other duties usually pertaining to the office of presiding officer and permitted by law.

(3) The vice-presiding officer, in the absence of the presiding officer, shall perform the duties delegated to the presiding officer in the preceding subsections, except the presiding officer shall sign all official papers of the board.

(4) In the absence of the presiding officer and vice-presiding officer from a regular or special meeting of the board, the remaining members shall appoint a board member to serve as the presiding officer, who shall serve until the conclusion of the meeting or until the arrival of the elected presiding officer. (History: 37-67-202, MCA; IMP, 37-67-201, MCA; Eff. 12/31/72; AMD, 1979 MAR p. 1687, Eff. 12/8/79; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1997 MAR p. 196, Eff. 1/28/97; AMD, 2002 MAR p. 1326, Eff. 4/26/02; TRANS, from Commerce, 2002 MAR p. 1756.)

24.183.402 BOARD MEETINGS (1) The board shall hold at least two meetings annually, with ten days notice, and as called by the presiding officer. (History: 37-67-202, MCA; IMP, 37-67-201, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 903, Eff. 6/24/78; AMD, 1979 MAR p. 1687, Eff. 12/28/79; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff.

7/1/81; AMD, 1997 MAR p. 196, Eff. 1/28/97; AMD, 2002 MAR p. 1326, Eff. 4/26/02; TRANS, from Commerce, 2002 MAR p. 1756.)

24.183.403 BOARD SEAL (1) The seal of the board shall be an embossed circular seal, one and one-half inches in diameter, consisting of two concentric circles. The inner circle shall contain the Great Seal of the state of Montana and the seal shall contain the wording: "Montana Board of Professional Engineers and Professional Land Surveyors". (History: 37-67-202, MCA; IMP, 37-67-201, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; TRANS, from Commerce, 2002 MAR p. 1756.)

24.183.404 FEE SCHEDULE (1) Fees shall be transmitted to the Board of Professional Engineers and Professional Land Surveyors. Fees for examinations administered by third-party vendors must be paid directly to the vendor approved by the board. The board assumes no responsibility for loss in transit of such remittances. Applicants not submitting the proper fees will be notified by the department.

(2) In every case, should the board deny the issuance of a certificate to any applicant, the initial fee deposited shall be retained by the board as an application fee.

(3) Fees are as follows:

(a) Engineer interns initial application	\$ 25
(b) Land surveyor interns initial application	25
(c) Professional engineers	
(i) Initial application	50
(ii) Application by comity	150
(d) Professional land surveyors	
(i) Initial application	50
(ii) Reexamination only for Montana law specific exam	50
(iii) Application by comity which includes Montana law specific exam	200
(e) Certificate of authority	
(i) Initial application	\$ 60
(f) Biennial renewal fees	
(i) Professional engineer	90
(ii) Professional land surveyor	90
(iii) Dual license as a professional engineer and land surveyor	110
(iv) Certificate of authority	50
(g) Miscellaneous fees	
(i) Emeritus application	25
(ii) Reactivation from emeritus status	250
(iii) Reactivation from inactive status	60
(iv) Reschedule fee for Montana law examinations	25
(v) Certificate of authority issued in conjunction with late renewal	12.50

(4) Additional standardized fees are specified in ARM 24.101.403.

(History: 37-1-134, 37-67-202, MCA; IMP, 37-1-134, 37-1-141, 37-1-319, 37-67-303, 37-67-312, 37-67-313, 37-67-320, 37-67-321, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 903, Eff. 6/24/78; AMD, 1979 MAR p. 1687, Eff. 12/28/79; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1982 MAR p. 2134, Eff. 12/17/82; AMD, 1984 MAR p. 922, Eff. 6/15/84; AMD, 1986 MAR p. 1958, Eff. 11/29/86; AMD, 1987 MAR p. 1555, Eff. 9/11/87; AMD, 1988 MAR p. 1979, Eff. 9/9/88; AMD, 1997 MAR p. 196, Eff. 1/28/97; AMD, 2000 MAR p. 743, Eff. 3/17/00; AMD, 2001 MAR p. 2288, Eff. 11/22/01; AMD, 2002 MAR p. 1326, Eff. 4/26/02;

TRANS, from Commerce, 2002 MAR p. 1756; AMD, 2006 MAR p. 1630, Eff. 6/23/06; AMD, 2006 MAR p. 1583, Eff. 7/1/06.)

24.183.405 FEE ABATEMENT (1) The Board of Professional Engineers and Professional Land Surveyors adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301. (History: 37-1-131, MCA; IMP, 17-2-302, 17-2-303, 37-1-134, MCA; NEW, 2006 MAR p. 1630, Eff. 6/23/06.)

24.183.406 BRANCH OFFICE (1) A branch office of an engineering or land surveying firm is defined as an office established to solicit and/or provide engineering or land surveying services.

(a) Each branch office of an engineering firm must have a resident professional engineer in responsible charge.

(b) Each branch office of a surveying firm must have a resident professional land surveyor in responsible charge.

(2) A resident professional engineer is defined as a person holding a valid professional engineering license in Montana and who supervises and is in responsible charge of all engineering work performed in the branch office. The resident professional engineer is not required to be physically located at the branch office.

(3) A resident professional land surveyor is defined as a person holding a valid professional land surveyor license in Montana and who supervises and is in responsible charge of all land surveying work performed in the branch office. The resident professional land surveyor is not required to be physically located at the branch office. (History: 37-1-131, MCA; IMP, 37-67-202, MCA; NEW, 2006 MAR p. 1630, Eff. 6/23/06.)

Rules 24.183.407 and 24.183.408 reserved

24.183.409 AFFILIATION WITH NATIONAL ASSOCIATIONS (1) The board may affiliate with the National Council of Examiners for Engineering and Surveying (NCEES). Any delegate or delegates to the council appointed by the board shall attend meetings of the council at the expense of the board. (History: 37-67-202, MCA; IMP, 37-67-202, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1994 MAR p. 2935, Eff. 11/11/94; TRANS, from Commerce, 2002 MAR p. 1756.)

Subchapter 5

Licensing

24.183.501 APPROVAL OF SCHOOLS (1) Baccalaureate engineering or engineering technology programs accredited by the Accreditation Board for Engineering and Technology (ABET) or equivalent curricula as approved by the board shall meet the educational requirement.

(2) The board will make a list available that shows the Montana schools offering surveying curricula acceptable to the board. All course credits acceptable as transferable to the surveying curricula of any school approved by the board will be acceptable by the board when transfer is accomplished by the applicant. (History: 37-67-202, MCA; IMP, 37-67-306, MCA; Eff. 12/31/72; AMD, 1979 MAR p. 1687, Eff. 12/28/79; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1986 MAR p. 1958, Eff. 11/29/86; AMD, 1997 MAR p. 196, Eff. 1/28/97; TRANS, from Commerce, 2002 MAR p. 1756.)

24.183.502 APPLICATIONS (1) Applications received by the department must be on a board approved form and accompanied by appropriate fees. An application not accompanied by the appropriate fees or not completed in its entirety with all required information shall be returned to the applicant with instructions. Fees will be deposited as received. (History: 37-67-202, MCA; IMP, 37-67-303, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 903, Eff. 6/24/78; AMD, 1979 MAR p. 1687, Eff. 12/28/79; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1986 MAR p. 1958, Eff. 11/29/86; AMD, 1997 MAR p. 196, Eff. 1/28/97; AMD, 2002 MAR p. 1326, Eff. 4/26/02; TRANS, from Commerce, 2002 MAR p. 1756.)

24.183.503 APPLICATION REFERENCES (1) The applicant shall arrange for the submission of completed reference forms as described in 37-67-305 and/or 37-67-308, MCA. The application must include a reference form, which the applicant shall provide to the references listed on the application. The reference form must be received directly from the applicants' references. For each working engagement listed showing experience, at least one individual shall serve as a reference for that engagement.

(2) No reference will be accepted by the board unless the reference form is fully completed and bears the signature of the reference. Until such time as the required reference forms are received, the board will not take action on the application. If the required reference forms are not received within a period of three months after the date of receipt of the application in the office of the board, the application shall be rejected and the application fees forfeited. (History: 37-67-202, MCA; IMP, 37-67-303, 37-67-305, 37-67-308, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 903, Eff. 6/24/78; AMD, 1979 MAR p. 1687, Eff. 12/28/79; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1986 MAR p. 1958, Eff. 11/29/86; AMD, 1997 MAR p. 196, Eff. 1/28/97; AMD, 2002 MAR p. 1326, Eff. 4/26/02; TRANS, from Commerce, 2002 MAR p. 1756.)

24.183.504 DISPOSAL OF APPLICATIONS (1) The board, after due consideration of an application and of information pertaining thereto:

- (a) will find the applicant eligible to sit for the appropriate exam; or
- (b) request the applicant to furnish such additional information as may be necessary; or
- (c) advise the applicant of the application's rejection in accordance with provisions of the law.

(2) A rejected applicant may request reconsideration under the section originally applied for, within one year of the date of notification, without additional fees. Additional evidence pertaining to the application must be furnished. However, reconsideration does not take into account experience or education subsequent to the date of application.

(3) An applicant who applies under a different section than that previously submitted shall submit a new complete application accompanied by the appropriate fee. (History: 37-67-202, MCA; IMP, 37-67-303, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 903, Eff. 6/24/78; AMD, 1979 MAR p. 1687, Eff. 12/28/79; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1997 MAR p. 196, Eff. 1/28/97; TRANS, from Commerce, 2002 MAR p. 1756.)

Rules 24.183.505 through 24.183.508 reserved

24.183.509 EXAMINATION PROCEDURES (1) The examinations required are defined in 37-67-311, MCA.

(2) Applicants will be notified of the time and place of examination at least 30 days in advance. The applicant will not be allowed to reschedule the examination without approval by the board or its designee, if the board is not advised 30 days in advance of the examination date of the extenuating circumstance which requires rescheduling. If the board does not approve the rescheduling, the applicant will have to pay a rescheduling fee.

(3) A passing grade of 70 percent in each part of the examination will be required.

(4) A candidate failing to pass any examination may take that examination a second time at a subsequent examination period upon payment of the reexamination fee specified by ARM 24.183.404. However, if more than three examination dates have passed since the candidate's original failure, the candidate must submit a new application and pay the appropriate application and test fee specified by ARM 24.183.404 before the candidate will be reexamined.

(5) The examinee may review the examination paper in the board office within 60 days after being notified of the status. No notes are to be made nor any marks made on the examination paper.

(6) The examination documents (test papers) will be retained in the examinee's file for a period of two years, and then destroyed. (History: 37-1-134, 37-67-202, MCA; IMP, 37-1-134, 37-67-311, MCA; Eff. 12/31/72; AMD, Eff. 11/4/74; AMD, 1978 MAR p. 903, Eff. 6/24/78; AMD, 1979 MAR p. 1687, Eff. 12/28/79; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1986 MAR p. 1958, Eff. 11/29/86; AMD, 1997 MAR p. 196, Eff. 1/28/97; AMD, 2002 MAR p. 1326, Eff. 4/26/02; TRANS, from Commerce, 2002 MAR p. 1756.)

24.183.510 GRANT AND ISSUE LICENSES (1) At the time an applicant is voted licensure by the board, the applicant will be assigned a license number and issued a license as a professional engineer and/or professional land surveyor as appropriate. These numbers will be issued consecutively in the order in which the applications are approved by the board. The applicant will be advised of the license number in the notice sent to the applicant.

(2) A license authorizing the practice of professional engineering or land surveying will be granted by the board and issued by the department after approval of an application and payment of the license fee. The license shall be signed by the presiding officer and the secretary and shall bear the license number of the licensee. (History: 37-67-202, MCA; IMP, 37-67-306, 37-67-309, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 903, Eff. 6/24/78; AMD, 1979 MAR p. 1678, Eff. 12/28/79; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1986 MAR p. 1958, Eff. 11/29/86; AMD, 1997 MAR p. 196, Eff. 1/28/97; AMD, 2002 MAR p. 1326, Eff. 4/26/02; TRANS, from Commerce, 2002 MAR p. 1756.)

24.183.511 LICENSE SEAL (1) Upon approval of the application by the board, the licensee will be advised that the licensee may secure an official seal. The following seals are authorized:

(a) pocket seal, the size commercially designated as a 1 5/8 inch seal;
(b) a desk seal or rubber stamp seal the size commercially designated as a two inch seal;

(c) the seal will bear the licensee's name, license number and the legend "Licensed Professional Engineer", "Licensed Professional Land Surveyor" or "Licensed Professional Engineer and Professional Land Surveyor"; and

(d) a seal is allowed to be reduced to one half of its original size.

(2) For stamping plans, specifications and reports, licensees are authorized to use a facsimile made of their official seal. The title page of all sets of plans and all documents filed with public authorities must bear the seal and original signature.

(3) Individuals licensed as a "Professional Engineer", "Professional Land Surveyor" or "Professional Engineer and Professional Land Surveyor" may secure an official seal, which must contain the licensee's name, license number, and the applicable legend "Licensed Professional Engineer", "Licensed Professional Land Surveyor", or "Licensed Professional Engineer and Land Surveyor". For the purpose of sealing printed drawings, specifications, and other appropriate documents, each licensee shall obtain an embossing or rubber stamp and an electronic reproduction facsimile of the seal to be used on documents prepared by or under the

supervision of a licensee. When required, the seal or electronic reproducible facsimile must be applied on all final original drawings, with the licensee's signature, to produce legible reproduction on all copies or prints made from the drawings.

(4) A signature is:

- (a) an original manual signature of the licensee who applied it; or
- (b) a digital signature, which has an electronic authentication process attached or is logically associated with an electronic document, and must be:
 - (i) unique to the person using it;
 - (ii) capable of verification;
 - (iii) under the sole control of the person using it; and
 - (iv) linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.

(History: 37-67-202, MCA; IMP, 37-67-314, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 903, Eff. 6/24/78; AMD, 1979 MAR p. 1687, Eff. 12/28/79; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1986 MAR p. 1958, Eff. 11/29/86; AMD, 1997 MAR p. 196, Eff. 1/28/97; AMD, 2002 MAR p. 1326, Eff. 4/26/02; TRANS, from Commerce, 2002 MAR p. 1756; AMD, 2006 MAR p. 1630, Eff. 6/23/06.)

24.183.512 APPLICATION FOR EMERITUS STATUS (1) A registrant who has terminated his practice of engineering or land surveying may apply for a certificate of emeritus status by submitting to the board a completed application therefore accompanied by the fee established by ARM 24.183.404.

(History: 37-67-202, MCA; IMP, 37-67-321, MCA; NEW, 1986 MAR p. 1958, Eff. 11/29/86; TRANS, from Commerce, 2002 MAR p. 1756.)

Subchapter 6 reserved

Subchapter 7

Licensure of Professional Engineers

24.183.701 COMITY FOR PROFESSIONAL ENGINEERS (1) The board may, upon application and payment of proper fee, issue a license as a professional engineer, to any person who submits a national council record issued to the person by proper authority of the National Council of Examiners for Engineering and Surveying (NCEES), or verification of licensure from any state or territory or possession of the United States, or any country, provided that the applicant's qualifications meet the requirements of the law and of the rules established by the board. Such applicants shall, as part of their application, complete and send to the department the standard application form. Applicants who have a current council record must complete only the following sections of the application for registration as a professional engineer:

- (a) general information;
- (b) licensure in other states;
- (c) affidavit; and
- (d) a completed engineer laws and rules questionnaire.

(2) Professional engineers applying by comity without an NCEES record are required to complete all sections of the application. The following are also required:

- (a) transcripts;
- (b) five completed reference forms as required by ARM 24.183.503;

(c) verification of taking and passing both the fundamentals of engineering (FE) examination and principles and practice of engineering (PPE) examination from the state of original licensure; and

(d) a completed engineer laws and rules questionnaire. (History: 37-67-202, MCA; IMP, 37-1-304, 37-67-312, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 903, Eff. 6/24/78; AMD, 1979 MAR p. 1687, Eff. 12/28/79; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1986 MAR p. 1958, Eff. 11/29/86; AMD, 1997 MAR p. 196, Eff. 1/28/97; AMD, 2002 MAR p. 1326, Eff. 4/26/02; TRANS, from Commerce, 2002 MAR p. 1756.)

24.183.702 CLASSIFICATION OF ENGINEERING EXPERIENCE

(1) Engineering experience shall include the following:

(a) Subprofessional experience gained before graduation. This experience shall be credited to the required preprofessional experience at a maximum of one-half the period of experience. Subprofessional experience shall be limited to no more than one year of preprofessional experience. Credible subprofessional experience may include one or more of the following:

- (i) engineering experience, supervised; or
- (ii) construction experience, supervised.

(b) Preprofessional experience is four years of total progressive experience, all of which is required to be completed at the time of application. Credible experience may include:

- (i) approved subprofessional experience;
- (ii) progressive experience on engineering projects which indicate the experience is of increasing quality and required greater responsibility;
- (iii) experience not obtained in violation of the licensure act;
- (iv) experience gained under the supervision of a licensed professional engineer/land surveyor or, if not, an explanation of why the experience should be considered acceptable;
- (v) credible teaching experience at an advanced level, post graduate or senior graduate, in a college or university offering an engineering curriculum of four years or more that is approved by the board;
- (vi) experience gained in engineering research and design projects by members of an engineering faculty, in an engineering curriculum approved by the board;
- (vii) successful completion of graduate study leading to the master's degree in engineering, which has followed a baccalaureate degree in engineering, as credit for one year's experience. If the Ph.D. in engineering is completed under the same conditions, two year's total experience may be credited, including the one year credited for the master's degree, in the two year's total. If the Ph.D. is obtained without the master's degree, two year's experience may be credited. All degrees shall have been obtained from colleges or universities with board approved programs.

(2) Experience must be completed at the time of application. Experience time cannot be counted during periods counted for education.

(3) Experience should be gained under the supervision of a registered professional engineer or, if not, an explanation should be made showing why the experience should be considered acceptable.

(4) Upon request by the board, an applicant must demonstrate knowledge of fundamental principles of engineering design and the practical solution of engineering problems. (History: 37-67-202, MCA; IMP, 37-67-306, 37-67-309, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 903, Eff. 6/24/78; AMD, 1979 MAR p. 1687, Eff. 12/28/79; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1986 MAR p. 1958, Eff. 11/29/86; AMD, 1998 MAR p. 534, Eff. 2/27/98; TRANS, from Commerce, 2002 MAR p. 1756; AMD, 2006 MAR p. 1630, Eff. 6/23/06.)

Subchapter 8

Licensure of Professional Land Surveyors

24.183.801 COMITY CONSIDERATION FOR PROFESSIONAL LAND SURVEYORS

(1) Licensed land surveyors from any state or territory or possession of the United States, or of any country, can apply for comity consideration. Comity applicants shall meet the minimum requirements of the law and rules established by the board. Applicants shall complete and send to the department the standard application and appropriate fees based on one of the following:

(a) Applicants who have a current National Council of Examiners for Engineering and Surveying (NCEES) record must request a copy of their record be sent to the board office. In addition, they must complete only the following sections of the application for licensure as a professional land surveyor:

- (i) general information;
- (ii) licensure in other state;
- (iii) affidavit; and
- (iv) the land surveyor laws and rules questionnaire.

(b) If the comity applicant does not have a NCEES record, the entire application must be completed and submitted. The applicant shall submit the following within three months of the boards' receipt of a completed application:

- (i) college or university transcripts when applicable;
- (ii) five completed reference forms as required by ARM 24.183.503;
- (iii) verification of licensure from state of original licensure which includes verification of passing the fundamentals of land surveying and principles and practices of land surveying examinations; and
- (iv) the land surveyors laws and rules questionnaire.

(2) Once approved by the board, all comity applicants shall pass a closed book, state-specific, land surveying examination. (History: 37-67-202, MCA; IMP, 37-1-304, 37-67-313, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 903, Eff. 6/24/78; AMD, 1979 MAR p. 1687, Eff. 12/28/79; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1983 MAR p. 645, Eff. 6/17/83; AMD, 1986 MAR p. 1958, Eff. 11/29/86; AMD, 1997 MAR p. 196, Eff. 1/28/97; AMD, 2002 MAR p. 1326, Eff. 4/26/02; TRANS, from Commerce, 2002 MAR p. 1756.)

24.183.802 CLASSIFICATION OF EXPERIENCE FOR LAND SURVEYING APPLICANTS (1) Land surveying experience shall include the following:

(a) preprofessional experience of four years of total progressive experience, gained under the supervision of a licensed professional land surveyor, all of which is required to be completed at the time of application. Land surveying experience must include a substantial portion spent in charge of work related to property conveyance and/or boundary line determination. Credible experience may include one or more of the following:

- (i) approved preprofessional experience;
- (ii) progressive experience on land surveying projects which indicate the experience is of increasing quality and required greater responsibility;
- (iii) experience not obtained in violation of the licensure act;
- (iv) experience such as aliquot part subdivision of sections, retracing existing boundaries, establishing new boundaries, corner search and reestablishment, researching existing public records, survey computations, preparation of legal descriptions, certificates of survey, subdivision plats, corner recordation forms, exhibits and other documents pertinent to such work; or

(v) credible teaching experience at an advanced level, post graduate or senior graduate, in a college or university offering a land surveying curriculum approved by the board, gained under the supervision of a licensed land surveyor.

(2) Experience time cannot be counted during periods counted for education.

(3) Upon request by the board, land surveyor applicants must demonstrate adequate experience in the field aspects of the profession.

(4) Subprofessional experience shall be credited to the required preprofessional experience at a maximum of one-half the period of experience. Subprofessional experience shall be limited to no more than two years of preprofessional experience. Credible subprofessional experience may include one or more of the following:

(a) approved subprofessional experience;

(b) survey experience done under the supervision of a licensed professional land surveyor, including such work as:

(i) construction layout of buildings and miscellaneous structures;

(ii) surveys necessary to obtain data and location of highways, roads, pipelines, canals, etc.;

(iii) construction staking for land modification; and

(iv) construction staking for highways, roads, utilities, etc.;

(c) other construction surveying experience supervised by a licensed professional land surveyor; or

(d) other surveying experience supervised by a licensed professional land surveyor.

(History: 37-67-202, MCA; IMP, 37-67-306, 37-67-309, MCA; NEW, 2006 MAR p. 1630, Eff. 6/23/06.)

Subchapter 9 reserved

Subchapter 10

Corner Recordation Requirements

24.183.1001 FORM OF CORNER RECORDS - INFORMATION TO BE INCLUDED (1)

The form for recordation of corners pursuant to the Corner Recordation Act of Montana (Title 70, chapter 22, part 1, MCA) has been approved by the board of professional engineers and land surveyors. The approved version of the form for public land survey system was adopted by the board on July 1, 1981, and the approved version of the form for filing under the survey of record index was adopted on February 20, 2004. Blank corner record forms can be obtained from the Montana Association of Registered Land Surveyors, P.O. Box 359, Columbia Falls, Montana 59912, by contacting the association directly at (406) 892-4579, or on the internet at www.marls.com.

(2) The information to be included in a corner record is as follows:

(a) A description or quotation of those portions of the original or subsequent record which were used in evaluating the corner position.

(i) The original record for corners of government surveys will usually be the general land office field notes.

(ii) The original record for nongovernment surveys will usually be subdivision plats, certificates of survey or other surveys of record.

(iii) Subsequent record can come from sources such as previously filed corner records, maps and plats, private and public records, etc. Some of the subsequent record, even though not in the public record, but known to have validity by the surveyor, may be quoted and appropriately noted. The record data help support the reestablished corner position because they clearly show on what history the surveyor based the corner position. In some cases,

however, the record may be unknown or not pertinent. A statement to that effect, if applicable, must appear on the corner record.

(b) A description of the original or subsequent record evidence found that locates the corner position.

(i) If portions of the found evidence cannot be reconciled with the record, then the disregarded record must be noted, and if possible, an opinion as to its cause narrated.

(ii) If no physical evidence of the original or subsequent monuments and accessories can be found, then the method used to reestablish the lost or obliterated corner (single proportion, fence intersection, parol evidence, terrain calls, centerline of road, etc.) shall be indicated.

(iii) Measurements used to establish proportioned positions must be shown on the corner recordation form or on a filed certificate of survey or subdivision plat referenced on the recordation form.

(c) A listing of all details about the corner and its location which will help exclusively identify the corner position, including size and type of monument and accessory, how marked if not shown in sketch, and distinguishing topographic calls which help locate the corner. In many cases, instructions on how to find the corner should be included.

(i) For public land survey system corners requiring recordation, sufficient information must be shown on the form to enable subsequent surveyors to verify the corner position identified on the form, and to reestablish the corner position if the monument is obliterated. Ideally, the references will be to at least two identifiable accessories or surveyed dimensions to two survey monuments.

(ii) References or ties to other corners are optional and may be drawn on the face or back of the corner record form, or references to certificate of survey may be made. Separate drawings may be attached to the corner form. If state plane coordinate values for the corner position are shown, then the control upon which they are based should be indicated.

(d) A sketch of the corner to show how a found or set corner is marked or show topography or accessory monuments found or set and their relation to the corner. There is no stipulated format; the sketch could be transcribed field note entries. For corners which were first shown on subdivision plats or on recorded or filed surveys, enough information must be shown so that the corner can be identified.

(e) The surveyor who performed or directed the field work which is depicted on the corner record shall sign and affix the licensee's seal in the certification.

(i) The affixing of the licensee's seal constitutes a certification by the surveyor that the corner record has been prepared in conformance with the Corner Recordation Act of Montana and the rules implementing the Act.

(ii) The employer blank is optional but useful in tracking down original field note data or adjacent record if, in the future, questions arise about the corner. The name and signature of the ground party chief is also optional information on the record form.

(f) For public land survey system corners, the cross index at the bottom of the page must be completed by the surveyor. Only the single township and range index where the corner is filed is to be completed.

(i) For corner records to be filed under the survey of record index, the index information must be filled in as completely as possible by the surveyor and made clear the name and number(s) of the recorded survey and the lot or parcel designation. The corner location diagram must have the pertinent section number filled in and a closed circle indicating the appropriate corner position in the section. This is intended to be an aid in searching the record once it has been filed. (History: 37-67-202, 70-22-107, MCA; IMP, 70-22-107, MCA; NEW, 1983 MAR p. 645, Eff. 6/17/83; AMD, 2002 MAR p. 1326, Eff. 4/26/02; TRANS, from Commerce, 2002 MAR p. 1756; AMD, 2005 MAR p. 1783, Eff. 9/23/05.)

Sub-Chapter 11

Uniform Standards For Monumentation, Certificates Of Survey, And Final Subdivision Plats

24.183.1101 UNIFORM STANDARDS FOR MONUMENTATION

(1) The following standards govern the monumentation of land surveys:

(a) The terms "monument" and "permanent monument" as used in these regulations mean any structure of masonry, metal or other permanent, durable material placed in the ground, which is exclusively identifiable as a monument to a survey point, expressly placed for surveying reference.

(b) All metal monuments must be at least one-half inch in diameter and 18 inches in length with a cap not less than one inch in diameter marked in a permanent manner with the license number of the surveyor in charge of the survey and either the name of the surveyor or the company employing the surveyor. Metal monuments marking a public land survey corner as described in 70-22-101, MCA, must be at least 24 inches long and 5/8 inch in diameter with an appropriately stamped metal cap at least two inches in diameter. A monument marking a public land survey corner may also consist of a cap as described in this rule set firmly in concrete.

(c) Before a subdivision plat or certificate of survey may be filed for record the surveyor shall confirm the location of as many monuments as, in the surveyor's professional judgment, are necessary to reasonably assure the perpetuation of any corner or boundary established by the survey and to enable other surveyors to reestablish those corners and boundaries and retrace the survey. The surveyor shall clearly identify on the face of the plat or certificate of survey all monuments pertinent to the survey, and the descriptions of these monuments must be sufficient to identify the monuments.

(d) The surveyor shall set all monuments prior to the filing of a plat or certificate of survey except those monuments that will be disturbed by the installation of improvements or that, because of severe weather conditions, may, in the surveyor's judgment, be more appropriately and accurately set after the weather has improved. In these two circumstances the surveyor may set monuments after the survey document is filed if the surveyor certifies on the survey document that the monuments will be set by a specified date. The surveyor shall set monuments, the placement of which has been deferred because of severe weather conditions, within 240 days of the date on which the survey document was filed.

(i) If during the later monumentation of the corners of a plat or certificate of survey that were not monumented before the plat or certificate was filed, the surveyor finds that it is necessary to set a reference monument to a corner, the surveyor shall prepare and file an amended certificate of survey or subdivision plat.

(ii) The failure of the surveyor to set the monuments by the date certified on the record of survey will be deemed a violation of these rules.

(e) The surveyor shall set monuments at the following locations:

(i) At each corner and angle point of all lots, blocks and parcels of land created by the survey.

(ii) At every point of intersection of the outer boundary of a subdivision with an existing road right-of-way line of record or a road right-of-way line created by the survey.

(iii) At every point of curve, point of tangency, point of reversed curve, point of compounded curve and point of intersection on each road right-of-way line created by the survey.

(iv) At the intersection of a boundary line and a meander line. Meander line angle points need not otherwise be monumented.

(f) If the placement of a required monument at its proper location is physically impractical, the surveyor may set a reference or witness monument. This monument has the

same status as other monuments of record if its location is properly shown. If the surveyor relies upon any existing monument in conducting a survey, he or she shall confirm the location of the monument and show and describe it on the resulting certificate of survey or subdivision plat. (History: 76-3-403, MCA; IMP, 76-3-403, MCA; NEW, Eff. 1/5/74; EMERG, AMD, Eff. 7/1/74; AMD, Eff. 10/5/74; AMD, 1980 MAR p. 2806, Eff. 10/17/80; TRANS, from Dept. of Comm. Affairs, Ch. 274, L. 1981, Eff. 7/1/81; AMD, 2000 MAR p. 462, Eff. 2/11/00; TRANS, from Commerce, 2005 MAR p. 966.)

Rules 24.183.1102 and 24.183.1103 reserved

24.183.1104 UNIFORM STANDARDS FOR CERTIFICATES OF SURVEY

(1) A certificate of survey may not be filed by a county clerk and recorder unless it complies with the following requirements:

(a) A certificate of survey must be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record and must be 18 inches by 24 inches, or 24 inches by 36 inches, overall to include a 1 1/2 inch margin on the binding side.

(b) One signed copy on cloth-backed material or on 3 mil or heavier matte stable-base polyester film or equivalent and one signed reproducible copy on a stable-base polyester film or equivalent must be submitted.

(c) If more than one sheet must be used to adequately depict the land surveyed, each sheet must show the number of that sheet and the total number of sheets included. All certifications must be placed or referred to on one sheet.

(d) A certificate of survey must show or contain on its face or on separate sheets referred to on its face the following information. The surveyor may, at his or her discretion, provide additional information regarding the survey.

(i) A title or title block including the quarter-section, section, township, range, principal meridian and county, and, if applicable, city or town in which the surveyed land is located. Except as provided in (1)(f)(v), a certificate of survey must not bear the title "plat," "subdivision" or any title other than "Certificate of Survey."

(ii) The name(s) of the person(s) who commissioned the survey and the names of any adjoining platted subdivisions and the numbers of any adjoining certificates of survey previously filed.

(iii) The date the survey was completed and a brief explanation of why the certificate of survey was prepared, such as to create a new parcel, retrace a section line or retrace an existing parcel of land.

(iv) A north arrow.

(v) A scale bar. (The scale must be sufficient to legibly represent the required information and data.)

(vi) The location of, and other information relating to all monuments found, set, reset, replaced or removed as required by ARM 24.183.1101(1)(c).

(A) If additional monuments are to be set after the certificate of survey is filed, these monuments must be shown by a distinct symbol, and the certificate of survey must bear a certification by the surveyor as to the reason the monuments have not been set and the date by which they will be set.

(B) All monuments found during a retracement that influenced the position of any corner or boundary indicated on the certificate of survey must be clearly shown as required by ARM 24.183.1101(1)(c).

(vii) The location of any section corners or corners of divisions of sections the surveyor deems to be pertinent to the survey.

(viii) Witness and reference monuments and basis of bearings. For purposes of this rule the term "basis of bearings" means the surveyor's statement as to the origin of the bearings

shown in the certificate of survey. The basis of bearings may refer to a particular line between monumented points in a previously filed survey document. If the certificate of survey shows true bearings, the basis of bearings must describe the method by which these true bearings were determined.

(ix) The bearings, distances and curve data of all boundary lines. If the parcel surveyed is bounded by an irregular shoreline or a body of water, the bearings and distances of a meander traverse generally paralleling the riparian boundary must be given.

(A) The courses along a meander line are shown solely to provide a basis for calculating the acreage of a parcel that has one or more riparian boundaries as the parcel existed at the time of survey.

(B) For purposes of this rule a line that indicates a fixed boundary of a parcel is not a "meander" or "meander line" and may not be designated as one.

(x) Data on all curves sufficient to enable the reestablishment of the curves on the ground. For circular curves these data must at least include radius and arc length. For nontangent curves, which must be so labeled, the certificate of survey must include the bearings of radial lines or chord length and bearing.

(xi) Lengths of all lines shown to at least tenths of a foot, and all angles and bearings shown to at least the nearest minute. Distance measurements must be stated in English units, but their metric equivalents, shown to the nearest hundredth of a meter, may be noted parenthetically.

(xii) A narrative legal description of the parcel surveyed as follows:

(A) If the parcel surveyed is either an aliquot part of a U.S. government section or a U.S. government lot, the information required by this subsection is the aliquot or government lot description of the parcel.

(B) If the survey depicts the retracement or division of a parcel or lot that is shown on a filed certificate of survey or subdivision plat, the information required by this subsection is the number or name of the certificate of survey or plat and the parcel or lot number of the parcel surveyed.

(C) If the parcel surveyed does not fall within (1)(d)(xii)(A) or (B), above, the information required by this subsection is the metes-and-bounds description of the perimeter boundary of the parcel surveyed.

(D) If the certificate of survey establishes the boundary of a parcel containing one or more interior parcels, the information required by this subsection is the legal description of the encompassing parcel.

(E) The requirement of this rule does not apply to certificates of survey that depict a partial retracement of the boundaries of an existing parcel or establish the location of lines or corners that control the location of an existing parcel.

(xiii) Except as provided by (1)(f)(iv), all parcels created by the survey, designated by number or letter, and the dimensions and area of each parcel. (Excepted parcels must be marked "Not included in this survey.") If a parcel created by the survey is identifiable as a 1/32 or larger aliquot part of a U.S. government section or as a U.S. government lot, it may be designated by number or letter or by its aliquot part or government lot identification.

(xiv) The location of any easement that will be created by reference to the certificate of survey.

(xv) The dated signature and the seal of the surveyor responsible for the survey. The affixing of this seal constitutes a certification by the surveyor that the certificate of survey has been prepared in conformance with the Montana Subdivision and Platting Act (76-3-101 through 76-3-625, MCA) and the regulations adopted under that Act.

(xvi) A memorandum of any oaths administered under 76-3-405, MCA.

(xvii) Space for the county clerk and recorder's filing information.

(e) Certificates of survey that do not represent a division of land, such as those depicting the retracement of an existing parcel and those prepared for informational purposes, must bear a statement as to their purpose and must meet applicable requirements of this rule for form and content.

(f) Procedures for divisions of land exempted from public review as subdivisions. Certificates of survey for divisions of land meeting the criteria set out in 76-3-207, MCA, must meet the following requirements:

(i) A certificate of survey of a division of land that would otherwise be a subdivision but that is exempted from subdivision review under 76-3-207, MCA, may not be filed by the county clerk and recorder unless it bears the acknowledged certificate of the property owner stating that the division of land is exempt from review as a subdivision and citing the applicable exemption.

(ii) If the exemption relied upon requires that the property owner enter into a covenant running with the land, the certificate of survey may not be filed unless it bears a signed and acknowledged recitation of the covenant.

(iii) If a certificate of survey invokes the exemption for gifts and sales to members of the landowner's immediate family, the certificate must indicate the name of the proposed grantee, the relationship of the grantee to the landowner and the parcel to be conveyed to the grantee.

(iv) If a certificate of survey invokes the exemption for the relocation of common boundary lines:

(A) The certificate of survey must bear the signatures of all landowners whose parcels will be altered by the proposed relocation. The certificate of survey must show that the exemption was used only to change the location of or eliminate a boundary line dividing two or more parcels, and must clearly distinguish the prior boundary location (shown, for example, by a dashed or broken line or a notation) from the new boundary (shown, for example, by a solid line or notation);

(B) The certificate of survey must show the boundaries of the area that is being removed from one parcel and joined with another parcel. The certificate of survey may, but is not required to, establish the exterior boundaries of the resulting parcels. However, the certificate of survey must show portions of the existing unchanged boundaries sufficient to clearly identify both the location and the extent of the boundary relocation;

(C) If a boundary line will be completely eliminated, the certificate must establish the boundary of the resulting parcel.

(v) A survey document that modifies lots in a platted and filed subdivision and invokes an exemption from subdivision review under 76-3-201 or 76-3-207(1)(d) or (e), MCA, must be entitled "amended plat of the (name of subdivision)," but for all other purposes is to be regarded as a certificate of survey. The document must contain a statement signed by the property owner that approval of the local government body is not required and citing the applicable exemption.

(vi) If the certificate of survey invokes an exemption from subdivision review under 76-3-207, MCA, the certificate of survey must bear, or be accompanied by, a certification by the county treasurer that all taxes and special assessments assessed and levied on the surveyed land have been paid.

(vii) For purposes of (1)(f), when the parcel of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms "property owner", "landowner" and "owner" mean the seller of the parcel under the contract-for-deed.

(g) Procedures for filing certificates of survey of divisions of land entirely exempted from the requirements of the Act. The divisions of land described in 76-3-201, 76-3-205 and 76-3-209, MCA, and divisions of federally owned land made by a United States government agency are not required to be surveyed, nor must a certificate of survey or subdivision plat showing these divisions be filed with the clerk and recorder. A certificate of survey of one of these

divisions may, however, be filed with the clerk and recorder if the certificate of survey meets the requirements for form and content for certificates of survey contained in this rule and bears a certificate of the surveyor performing the survey citing the applicable exemption from the Act or, when applicable, that the land surveyed is owned by the federal government. (History: 76-3-403, MCA; IMP, 76-3-403, MCA; NEW, Eff. 1/5/74; EMERG, AMD, Eff. 7/1/74; AMD, Eff. 10/5/74; AMD, Eff. 4/5/76; AMD, 1977 MAR p. 955, Eff. 1/26/77; AMD, 1980 MAR p. 2806, Eff. 10/17/80; TRANS, from Dept. of Comm. Affairs, Ch. 274, L. 1981, Eff. 7/1/81; AMD, 2000 MAR p. 462, Eff. 2/11/00; TRANS, from Commerce, 2005 MAR p. 966.)

Rules 24.183.1105 and 24.183.1106 reserved

24.183.1107 UNIFORM STANDARDS FOR FINAL SUBDIVISION PLATS (1) A final subdivision plat may not be approved by the governing body or filed by the county clerk and recorder unless it complies with the following requirements:

(a) Final subdivision plats must be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record and must be 18 inches by 24 inches or 24 inches by 36 inches overall to include a 1 1/2-inch margin on the binding side.

(b) One signed copy on cloth-backed material or on 3 mil or heavier matte stable-base polyester film or equivalent and one signed reproducible copy on a stable-base polyester film or equivalent must be submitted.

(c) If more than one sheet must be used to adequately depict the land subdivided, each sheet must show the number of that sheet and the total number of sheets included. All certifications must be placed or referred to on one sheet.

(d) A survey that modifies a filed subdivision plat must be entitled "amended plat of (lot, block and name of subdivision being amended)," and unless it is exempt from subdivision review by 76-3-201 or 76-3-207(1)(d) or (e), MCA, may not be filed with the county clerk and recorder unless it meets the filing requirements for final subdivision plats specified in this rule.

(2) A final plat submitted for approval must show or contain, on its face or on separate sheets referred to on the plat, the following information. The surveyor may, at his or her discretion, provide additional information regarding the survey.

(a) A title or title block indicating the quarter-section, section, township, range, principal meridian, county and, if applicable city or town, in which the subdivision is located. The title of the plat must contain the words "plat" and either "subdivision" or "addition".

(b) The name of the person(s) who commissioned the survey and the name(s) of the owner of the land to be subdivided if other than the person(s) commissioning the survey, the names of any adjoining platted subdivisions, and the numbers of any adjoining certificates of survey previously filed.

(c) A north arrow.

(d) A scale bar. (The scale must be sufficient to legibly represent the required information and data on the plat.)

(e) The location of, and other information relating to all monuments found, set, reset, replaced or removed as required by ARM 24.183.1101(1)(c).

(i) If additional monuments are to be set after the plat is filed, the location of these monuments must be shown by a distinct symbol, and the plat must bear a certification by the surveyor as to the reason the monuments have not been set and the date by which they will be set.

(ii) All monuments found during a retracement that influenced the position of any corner or boundary indicated on the plat must be clearly shown as required by ARM 24.183.1101(1)(c).

(f) The location of any section corners or corners of divisions of sections pertinent to the survey.

(g) Witness and reference monuments and basis of bearings. For purposes of this rule the term "basis of bearings" means the surveyor's statement as to the origin of the bearings shown on the plat. The basis of bearings may refer to a particular line between monumented points in a previously filed survey document. If the plat shows true bearings, the basis of bearings must describe the method by which these true bearings were determined.

(h) The bearings, distances and curve data of all boundary lines. If the subdivision is bounded by an irregular shoreline or body of water that is a riparian boundary, the bearings and distances of a meander traverse generally paralleling the riparian boundary must be given.

(i) The courses along a meander line are shown solely to provide a basis for calculating the acreage of a parcel with one or more riparian boundaries as the parcel existed at the time of survey.

(ii) For purposes of these regulations a line that indicates a fixed boundary of a parcel is not a "meander" or "meander line" and may not be designated as one.

(i) Data on all curves sufficient to enable the re-establishment of the curves on the ground. For circular curves these data must at least include radius and arc length. For non-tangent curves, which must be so labeled, the plat must include the bearings of radial lines or chord length and bearing.

(j) Lengths of all lines shown to at least tenths of a foot, and all angles and bearings shown to at least the nearest minute. Distance measurements must be stated in English units, but their metric equivalents, shown to the nearest hundredth of a meter, may be noted parenthetically.

(k) The location of any section corners or corners of divisions of sections the surveyor deems to be pertinent to the subdivision.

(l) All lots and blocks in the subdivision, designated by number, the dimensions of each lot and block, the area of each lot, and the total acreage of all lots. (Excepted parcels must be marked "Not included in this subdivision" or "Not included in this plat," as appropriate, and the bearings and lengths of these excepted boundaries must be shown.)

(m) All streets, alleys, avenues, roads and highways; their widths (if ascertainable) from public records, bearings and area; the width and purpose of all road rights-of-way and all other easements that will be created by the filing of the plat; and the names of all streets, roads and highways.

(n) The location, dimensions and areas of all parks, common areas and other grounds dedicated for public use.

(o) The total acreage of the subdivision.

(p) A narrative legal description of the subdivision as follows:

(i) If the parcel being subdivided is either an aliquot part of a U.S. government section or a U.S. government lot, the information required by this subsection is the aliquot or government lot description of the parcel.

(ii) If the plat depicts the division of a parcel or lot that is shown on a filed certificate of survey or subdivision plat, the information required by this subsection is the number or name of the certificate of survey or plat and the number of the parcel or lot affected by the survey.

(iii) If the parcel surveyed does not fall within (2)(p)(i) or (ii), above, the information required by this subsection is the metes-and-bounds description of the perimeter boundary of the subdivision.

(iv) If the plat establishes the boundaries of a subdivision containing one or more interior parcels, the information required by this subsection is the legal description of the perimeter boundary of the subdivision.

(q) The dated signature and the seal of the surveyor responsible for the survey. The affixing of this seal constitutes a certification by the surveyor that the final plat has been prepared in conformance with the Montana Subdivision and Platting Act (76-3-101 through 76-3-625, MCA) and the regulations adopted under that Act.

- (r) A memorandum of any oaths administered under 76-3-405, MCA.
- (s) The dated, signed and acknowledged consent to the subdivision of the owner of the land being subdivided. For purposes of this rule when the parcel of land proposed for subdivision is being conveyed under a contract-for-deed, the terms "owner" and "owner of the land" refers to the seller under the contract-for-deed.
- (t) Certification by the governing body that the final subdivision plat is approved.
- (u) Space for the clerk and recorder's filing information.
- (3) The following documents must appear on the face of or accompany the approved final plat when it is presented to the county clerk and recorder for filing:
 - (a) If applicable, the owner's certificate of dedication of streets, parks, playground easements or other public improvements.
 - (b) If applicable, a certificate of the governing body expressly accepting any dedicated land, easements or improvements. An acceptance of a dedication is ineffective without this certification.
 - (c) A certificate of a title abstractor showing the names of the owners of record of the land to be subdivided and the names of any lien holders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land.
 - (d) Copies of any covenants or deed restrictions relating to the subdivision.
 - (e) If applicable, a certificate from the state department of environmental quality stating that it has approved the plans and specifications for water supply and sanitary facilities.
 - (f) A certificate from the subdivider indicating which required public improvements have been installed and a copy of any subdivision improvements agreement securing the future construction of any additional public improvement to be installed.
 - (g) Unless otherwise provided by local subdivision regulations, copies of final plans, profiles, grades and specifications for improvements, including a complete grading and drainage plan, with the certification of a registered professional engineer that all required improvements which have been installed are in conformance with the attached plans. Local subdivision regulations may authorize the subdivider, under conditions satisfactory to the governing body, to prepare these plans and specifications after the final plat has been filed or file them with a government official other than the county clerk and recorder, or both.
 - (h) If applicable, the certificate of the examining land surveyor.
 - (i) If a street created by the plat will intersect with a state highway, a copy of the state highway access or encroachment permit.
 - (j) The certification of the county treasurer that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid. (History: 76-3-403, MCA; IMP, 76-3-403, MCA; NEW, Eff. 1/5/74; EMERG, AMD, Eff. 7/1/74; AMD, Eff. 10/5/74; AMD, Eff. 4/5/76; AMD, 1977 MAR p. 959, Eff. 11/26/77; AMD, 1980 MAR p. 2806, Eff. 10/17/80; TRANS, from Dept. of Comm. Affairs, Ch. 274, L. 1981, Eff. 7/1/81; AMD, 2000 MAR p. 1041, Eff. 2/11/00; TRANS, from Commerce, 2005 MAR p. 966.)

Sub-Chapters 12 through 14 reserved
Sub-Chapter 15

Shop Drawings

24.183.1501 FIRE PROTECTION SHOP DRAWINGS (1) When fire protection shop drawings are used to finalize engineering concepts:

- (a) The licensee (a licensed professional engineer) shall provide the design concept adequate for shop drawing preparation by others. The design concept for sprinkler systems must include as a minimum:

- (i) the density and water flow pressure requirements for the sprinkler system design;
 - (ii) the classification of commodities to be protected; and
 - (iii) confirmation of adequate water supply.
- (b) A properly qualified technician or licensee shall execute the design concept and prepare shop drawings. Shop drawings for sprinkler systems must include as a minimum:
- (i) layout of risers;
 - (ii) cross-mains;
 - (iii) branch lines;
 - (iv) sprinkler heads;
 - (v) sizing of pipe;
 - (vi) hanger locations; and
 - (vii) hydraulic calculations, in accordance with the design concepts.
- (2) The licensee should not seal the shop drawings. A letter of review must be prepared indicating the licensee's acceptance of the shop drawings as being in accordance with the design concept. Such review letter may be made available to appropriate jurisdictional authorities and interested parties.
- (3) For the purposes of (1)(b), a "qualified technician" is a person who has at least one of the following qualifications:
- (a) a national institute for certification in engineering technologies (NICET) level III technician certification;
 - (b) a NICET level IV technician certification; or
 - (c) 20 years experience in the field of automatic sprinkler layout in Montana, with the end of the 20-year experience term terminating February 1, 2002.
- (4) A licensee shall not be required to provide design concepts or letter of review for:
- (a) projects exempt from building code requirements for fire protection;
 - (b) remodeling involving less than 100 sprinklers to an existing fire protection system, provided there is no change in occupancy classification, storage configuration, or other change in occupancy use that would require design concept modifications; or
 - (c) routine maintenance, when accomplished in accordance with national fire protection association (NFPA) standard #25, "Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems."
- (5) Information regarding the organizations referred to in this rule can be obtained from:
- (a) NICET, 1420 King Street, Alexandria, VA 23314, or via the internet at <http://nicet.org>; and
 - (b) NFPA, PO Box 9101, Quincy, Massachusetts, 02269-9101, or via the internet at <http://www.nfpa.org/Home/index.asp>. (History: 37-67-202, MCA; IMP, 37-67-101, MCA; NEW, 2002 MAR p. 3152, Eff. 11/15/02.)

Sub-Chapters 16 through 20 reserved

Subchapter 21

Renewals and Continuing Education

- 24.183.2101 RENEWALS** (1) Licenses must be renewed on or before the date set by ARM 24.101.413.
- (2) Renewal notices will be sent as specified in ARM 24.101.414. The renewal notice will specify the fees for renewal.
- (3) The provisions of ARM 24.101.408 apply. (History: 37-67-202, MCA; IMP, 37-1-141, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 903, Eff. 6/24/78; AMD, 1979 MAR p. 1687, Eff. 12/28/79; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1983 MAR p. 645, Eff. 6/17/83; AMD, 1983 MAR p. 1717, Eff. 1/1/84; AMD, 1986 MAR p. 1958, Eff. 11/29/86; AMD, 1997 MAR p. 196, Eff. 1/28/97; AMD, 2002 MAR p. 1326, Eff. 4/26/02; TRANS,

from Commerce, 2002 MAR p. 1756; AMD, 2006 MAR p. 1633, Eff. 6/23/06; AMD, 2006 MAR p. 1583, Eff. 7/1/06.)

24.183.2102 INACTIVE STATUS AND REACTIVATION (1) A licensee may place the license on inactive status by either indicating on the renewal form that inactive status is desired, or by informing the board office, in writing, that an inactive status is desired. It is the sole responsibility of the inactive licensee to keep the board informed as to any change of address during the period of time the license remains on inactive status. Inactive licensees must pay the renewal fee annually to maintain license status.

(2) A licensee may not practice any professional engineering or land surveying work in the state of Montana while the license is in an inactive status.

(3) Upon application and payment of the appropriate fee, the board may reactivate an inactive license if the applicant completes each of the following:

(a) signifies to the board, in writing, that upon issuance of the active license, the applicant intends to be an active practitioner in the state of Montana; and

(b) presents satisfactory evidence that the applicant has attended 30 hours of continuing education which comply with the continuing education rules of the board.

(4) In the event an inactive licensee does not maintain a current license in any jurisdiction for the three previous years prior to requesting reinstatement, the board may require the applicant to take the principles and practice of engineering (PE) examination or the principles and practice of land surveying (PLS) examination. (History: 37-1-319, 37-67-202, MCA; IMP, 37-1-319, 37-67-315, MCA; NEW, 1997 MAR p. 196, Eff. 1/28/97; AMD, 2002 MAR p. 1326, Eff. 4/26/02; TRANS, from Commerce, 2002 MAR p. 1756.)

24.183.2103 LATE RENEWAL (1) Any renewal postmarked after the renewal date specified in ARM 24.101.413 is considered late and subject to the late penalty fee as specified in ARM 24.101.404.

(2) The provisions of ARM 24.101.408 apply. (History: 37-1-134, 37-67-202, MCA; IMP, 37-1-141, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 903, Eff. 6/24/78; AMD, 1979 MAR p. 1687, Eff. 12/28/79; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1982 MAR p. 2134, Eff. 12/17/82; AMD, 1983 MAR p. 1717, Eff. 1/1/84; AMD, 1997 MAR p. 196, Eff. 1/28/97; AMD, 2002 MAR p. 1326, Eff. 4/26/02; TRANS, from Commerce, 2002 MAR p. 1756; AMD, 2006 MAR p. 1583, Eff. 7/1/06.)

24.183.2104 EXPIRED CERTIFICATE - RENEWAL GRACE PERIOD (REPEALED) (History: 37-67-202, MCA; IMP, 37-67-315, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 903, Eff. 6/24/78; AMD, 1979 MAR p. 1687, Eff. 12/28/79; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1983 MAR p. 645, Eff. 6/17/83; TRANS, from Commerce, 2002 MAR p. 1756; REP, 2006 MAR p. 1583, Eff. 7/1/06.)

24.183.2105 CONTINUING PROFESSIONAL COMPETENCY - CONTINUING EDUCATION

(1) Every licensee shall meet the continuing professional competency (continuing education) requirements of these regulations for professional development as a condition for licensure renewal.

(2) Terms used in this rule are defined as follows:

(a) "Professional development hour (PDH)" means a contact hour (nominal) of instruction or presentation;

(b) "Continuing education unit (CEU)" means a unit of credit customarily used for continuing education courses. One continuing education unit equals ten hours of class in an approved continuing education course;

(c) "College/unit semester/quarter hour" means credit for courses in ABET approved programs or other related college courses approved in accordance with (5), below;

(d) "Course/activity" means any qualifying course or activity with a clear purpose and objective which will maintain, improve or expand the skills and knowledge relevant to the licensee's field of practice;

(e) "Dual license" means a person who is licensed as both an engineer and a land surveyor.

(3) Every licensee is required to obtain 30 PDH units during the two-year renewal period. If a licensee exceeds the annual requirement in any renewal period, a maximum of 15 PDH units may be carried forward into the subsequent renewal period. PDH units may be earned as follows:

(a) successful completion of college courses;

(b) successful completion of continuing education courses;

(c) successful completion of correspondence, televised, videotaped and other short courses/tutorials;

(d) presenting or attending qualifying seminars, in-house courses, workshops or professional or technical presentations made at meetings, conventions or conferences;

(e) teaching or instruction in (a) through (d), above;

(f) authoring published papers, articles or books;

(g) active participation in professional or technical societies;

(h) patents.

(4) The conversion of other units of credit to PDH units is as follows:

(a) one college or unit semester hour..... 45 PDH

(b) one college or unit quarter hour 30 PDH

(c) one continuing education unit..... 10 PDH

(d) one hour of professional development in course work, seminars or professional or technical presentations made at meetings, conventions or conferences 1 PDH

(e) each published paper, article or book..... 10 PDH

(f) active participation in professional and technical society (each organization)2 PDH

(g) each patent..... 10 PDH

(h) for teaching apply multiple of two. (Teaching credit is valid for teaching a course or seminar for the first time only. Teaching credit does not apply to full-time faculty.)

(i) self-study..... 10 PDH

(A maximum of 10 PDH will be allowed per renewal cycle for self-study. Self-study is considered a formatted review of new subject matter or technical information such as video tapes series, Internet courses that do not include a final examination, etc.)

(5) The board has final authority with respect to approval of courses, credit, PDH value for courses and other methods of earning credit.

(a) Credit for college or community college approved courses will be based upon course credit established by the college.

(b) Credit for qualifying seminars and workshops will be based on one PDH unit for each hour of attendance. Attendance at qualifying programs presented at professional and/or technical society meetings will earn PDH units for the actual time of each program.

(c) Credit determination for each published paper, article or book and each patent is the responsibility of the licensee (subject to review as required by the board).

(d) Credit for active participation in professional and technical societies (limited to two PDH per organization) requires that a licensee serve as an officer and/or actively participate in a

committee of the organization. PDH credits are not earned until the end of each year of service is completed.

(6) The responsibility of maintaining records to be used to support credits claimed is the responsibility of the licensee. Records required include, but are not limited to:

(a) a log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name and PDH credits earned;

(b) attendance verification records in the form of completion certificates or other documents supporting evidence of attendance; or

(c) records as maintained by the professional development registry for engineers and surveyors (PDRES) or other similar repositories. These records must be maintained for a period of three years and copies may be requested by the board for audit verification purposes.

(7) A licensee may be exempt from the professional development educational requirements for one of the following reasons:

(a) New licensees by way of examination or comity shall be exempt from accruing PDHs for 12 months following licensure, after which 7.5 PDHs are required for each six-month period of licensure until the first renewal period that occurs on or after June 30, 2008;

(b) A licensee serving on temporary active duty in the armed forces of the United States for a period of time exceeding 120 consecutive days in a year shall be exempt from obtaining the professional development hours required during that year;

(c) Licensees experiencing physical disability, illness or other extenuating circumstances as reviewed and approved by the board may be exempt. Supporting documentation must be furnished to the board;

(d) Licensees who list their occupation as "retired" on the board approved renewal form and who further certify that they are no longer receiving any remuneration from providing professional engineering or land surveying services shall be exempt from the professional development hours required. In the event such a person elects to return to active practice of professional engineering or land surveying, professional development hours must be earned before returning to active practice for each year exempted not to exceed the annual requirement for two years.

(8) The number of PDH units required by dual licensees shall remain 30, at least one-third of which shall be obtained in each profession. (History: 37-1-319, MCA; IMP, 37-1-306, 37-1-319, MCA; NEW, 1997 MAR p. 196, Eff. 1/28/97; TRANS, from Commerce, 2002 MAR p. 1756; AMD, 2006 MAR p. 1630, Eff. 6/23/06; AMD, 2006 MAR p. 1633, Eff. 6/23/06.)

Subchapter 22

Unprofessional Conduct

24.183.2201 INTRODUCTION (1) In order to safeguard life, health and property, to promote the public welfare, and to establish and maintain a high standard of integrity and practice, the following rules are binding on all licensees.

(a) The board requires that all licensees uphold and advance the honor, integrity and dignity of their engineering and surveying professions within the ethical standards encompassed in this chapter.

(b) All licensees are required to have knowledge of the laws and rules of their profession and shall understand them. Such knowledge shall encompass the understanding that the practice of engineering and land surveying is a privilege, as opposed to a right.

(2) All licensees shall insure that their communications with others will be clear, complete, accurate, objective, truthful and timely. This includes the report of errors, omissions, mistakes and their remedy when appropriate. (History: 37-1-319, 37-67-202, MCA; IMP, 37-67-

301, 37-67-331, MCA; NEW, 2001 MAR p. 553, Eff. 4/6/01; TRANS, from Commerce, 2002 MAR p. 1756.)

24.183.2202 SAFETY, HEALTH AND WELFARE OF THE PUBLIC PARAMOUNT IN THE PERFORMANCE OF PROFESSIONAL DUTIES (1) In the performance of professional duties that are within the scope of the licensee's assigned responsibilities, licensees shall recognize their primary obligation is to protect the safety, health, property and welfare of the public. If their professional judgment is overruled under circumstances where the safety, health, property or welfare of the public are endangered, they shall notify their employer, client and such other authority as may be appropriate.

(2) Licensees shall approve and seal those design documents and surveys which are in conformity with accepted engineering and land surveying standards and are safe for public health, property and welfare.

(3) Licensees having direct knowledge of any alleged violation of the laws and rules of professional conduct must report all such allegations to the board. (History: 37-1-319, 37-67-202, MCA; IMP, 37-1-316, 37-67-301, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 903, Eff. 6/24/78; AMD, 1979 MAR p. 1687, Eff. 12/28/79; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1997 MAR p. 196, Eff. 1/28/97; AMD, 2001 MAR p. 553, Eff. 4/6/01; TRANS, from Commerce, 2002 MAR p. 1756; AMD, 2006 MAR p. 1630, Eff. 6/23/06.)

24.183.2203 PERFORMANCE OF SERVICES ONLY IN AREAS OF COMPETENCE

(1) Licensees shall perform services only in the areas of their competence gained through education or verifiable experience.

(2) Licensees shall not affix their signatures or seals to any plans or documents dealing with subject matter in which they lack competence, nor to any such plan or document not prepared under their responsible charge.

(3) If a question arises as to the competence of a licensee in a specific technical field which cannot otherwise be resolved to the board's satisfaction, the board, upon request of the licensee or on its own volition, may require that the licensee take an appropriate examination. (History: 37-1-319, 37-67-202, MCA; IMP, 37-1-316, 37-67-301, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 903, Eff. 6/24/78; AMD, 1979 MAR p. 1687, Eff. 12/28/79; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1997 MAR p. 196, Eff. 1/28/97; AMD, 2001 MAR p. 553, Eff. 4/6/01; TRANS, from Commerce, 2002 MAR p. 1756.)

24.183.2204 CONFLICTS OF INTEREST (1) Licensees shall act in professional matters for each employer or client as faithful agents, and shall avoid conflicts of interest.

(2) Licensees shall disclose all known or potential conflicts of interest to their employers and clients by promptly informing them of any business association, interest or other circumstances which could influence their judgment or the quality of their services.

(3) Licensees shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed to, and agreed to, by all interested parties.

(4) Licensees shall not solicit or accept financial or other valuable consideration, directly or indirectly, from contractors, their agents or other parties in connection with work for their employers or clients for which the licensee is responsible.

(5) Licensees in public service as members, advisors or employees of a governmental body or department shall not participate in decisions with respect to professional services solicited or provided by them or their organizations.

(6) Licensees shall not solicit or accept a professional contract from a governmental body on which a principal or officer of their organization serves as a member, except upon public disclosure of all pertinent facts and circumstances and consent of appropriate public authority. (History: 37-1-319, 37-67-202, MCA; IMP, 37-1-316, 37-67-301, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 903, Eff. 6/24/78; AMD, 1979 MAR p. 1687, Eff. 12/28/79; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1997 MAR p. 196, Eff. 1/28/97; AMD, 2001 MAR p. 553, Eff. 4/6/01; TRANS, from Commerce, 2002 MAR p. 1756.)

24.183.2205 AVOIDANCE OF IMPROPER SOLICITATION OF PROFESSIONAL EMPLOYMENT (1) Licensees shall not attempt to supplant other licensees or firms from work that is in progress. This prohibition shall not preclude an engineer/surveyor from responding to a client/owner initiated solicitation for a second opinion.

(2) Licensees shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice or employment of other licensees, nor indiscriminately criticize other licensees' work.

(3) The licensee shall accurately represent to a prospective or existing client or employer the licensee's qualifications and scope of the licensee's responsibility in connection with work for which they are claiming experience. (History: 37-1-319, 37-67-202, MCA; IMP, 37-1-316, 37-67-301, 37-67-331, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 903, Eff. 6/24/78; AMD, 1979 MAR p. 1687, Eff. 12/28/79; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1990 MAR p. 1701, Eff. 8/31/90; AMD, 1997 MAR p. 196, Eff. 1/28/97; AMD, 2001 MAR p. 553, Eff. 4/6/01; TRANS, from Commerce, 2002 MAR p. 1756.)

24.183.2206 ISSUANCE OF PUBLIC STATEMENTS (1) Public statements may only be issued in an objective and truthful manner.

(a) Licensees shall be objective and truthful in professional reports, statements and testimony.

(b) Licensees may express publicly a professional opinion on technical subjects only when the opinion is founded upon adequate knowledge of the facts and competence in the subject matter.

(c) Licensees shall issue no statements, criticism or arguments on technical matters which are inspired or paid for by interested parties, unless the licensees have prefaced their comments by explicitly identifying the interested parties on whose behalf they are speaking and by revealing the existence of any interest the licensees may have in the matters. (History: 37-67-202, MCA; IMP, 37-1-316, 37-67-301, MCA; NEW, 2001 MAR p. 553, Eff. 4/6/01; TRANS, from Commerce, 2002 MAR p. 1756.)

Subchapter 23 reserved

Sub-Chapter 24

Complaint Procedures

24.183.2401 SCREENING PANEL (1) The board screening panel shall consist of one professional engineer board member; one land surveyor board member; and one public board member, as chosen by the presiding officer. The presiding officer may reappoint screening panel members, or replace screening panel members as necessary at the presiding officer's discretion. (History: 37-67-202, MCA; IMP, 37-1-307, MCA; NEW, 1997 MAR p. 196, Eff. 1/28/97; AMD, 2002 MAR p. 1326, Eff. 4/26/02; TRANS, from Commerce, 2002 MAR p. 1756.)

24.183.2402 COMPLAINT PROCESS (1) A person, government or private entity may submit a written complaint to the board charging a licensee or license applicant with a violation of board statute or rules, and specifying the grounds for the complaint.

(2) Complaints must be in writing, and must be filed on the proper complaint form prescribed by the board. The board form shall contain a release of records statement, to be signed by the complainant.

(3) Upon receipt of the written complaint form, the board office shall log in the complaint and assign the complaint a complaint number. The complaint will then be sent to the licensee complained about for a written response. Upon receipt of the licensee's written response, or the expiration of time for submitting a response, both complaint and response (if any) shall be considered by the screening panel of the board for appropriate action including dismissal, investigation or a finding of reasonable cause of violation of a particular or specific statute or rule. The board office shall notify both complainant and licensee of the determination made by the screening panel.

(4) If a reasonable cause violation determination is made by the screening panel, the Montana Administrative Procedure Act shall be followed for all disciplinary proceedings undertaken.

(5) The screening panel will not act upon anonymous complaints.
(History: 37-67-202, MCA; IMP, 37-1-308, 37-1-309, 37-67-331, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1986 MAR p. 1958, Eff. 11/29/86; AMD, 1994 MAR p. 2935, Eff. 11/11/94; AMD, 1997 MAR p. 196, Eff. 1/28/97; AMD, 2002 MAR p. 1326, Eff. 4/26/02; TRANS, from Commerce, 2002 MAR p. 1756.)